

ENVIRONMENTAL ASSESSMENT
STATEMENT OF FINDINGS
AND
FINDINGS OF NO SIGNIFICANT IMPACT

(File No. 200801425)

Applicant: South Harriman Baptist Church

Proposed Discharge of Fill Material into Waters of the United States
Associated with the Expansion of South Harriman Baptist Church
South Harriman, Roane County, Tennessee

U.S. ARMY CORPS OF ENGINEERS
Nashville District, Regulatory Branch

in cooperation with the
TENNESSEE VALLEY AUTHORITY

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1.0 Proposed Activity

1.1 Background. On 22 August 2008, South Harriman Baptist Church (SHBC) submitted an application for a Department of the Army (DA) permit pursuant to Section 404 of the Clean Water Act, and Tennessee Valley Authority (TVA) Section 26a approval for the relocation of 150 linear feet and the encapsulation of 300 feet of an unnamed tributary. The application also included the removal of 50 linear feet of a storm water conveyance pipe. The storm water conveyance pipe would be replaced with grass and native stone.

A site inspection is generally performed in connection with the processing of all standard DA permit applications. The Corps, TVA and Mr. James Burnham of Lackey & Associates, Inc. (agent for SHBC) performed a joint site inspection on 18 November 2008.

1.1.1 Site Background. Two USGS topographic maps of the area were examined during the review period; one current version (1963 rev 1980) and one historic version (1893). Both maps show the proposed site. The 1980 map shows the presence of two railroad "Ys" and a railroad yard both constructed since the 1893 map was created. The subject site lies adjacent to a spur line that connects these two "Ys" and two railroad yards. In the period of time between the production of these two maps, land grading has taken place to install the railroad features. In 1951 the TVA constructed the above mentioned railroad as part of the Watts Bar Reservoir project (Kinston Steam Plant Access Railroad). Baumgartner Road was also built during this period. Fill material to create both roadbeds is believed to have come from the immediate vicinity. This activity likely created the unnamed tributary (historically a drainage channel) at the subject site.

1.2 Project Description. The proposed work would include the relocation of 150 linear feet and the encapsulation of 300 feet of an unnamed tributary at SHBC. Surrounding land use is primarily residential and some commercial. The channel flows approximately 760 feet north to south along the west boundary of the property. Immediately upstream of the subject site the stream is encapsulated in a 36-inch pipe. The typical stream flow is 3 feet in width and 4 inches deep while the overall channel dimensions are 15 feet in width and 4 feet in depth.

1.2.1 Proposed Mitigation. The applicant would provide onsite compensatory mitigation for the loss of stream due to culverting (minus the road crossings). In stream habitat and channel improvements, and a riparian buffer would be established on the downstream 310 linear feet of the property. Trees would be planted on 15-foot centers in alternating rows in an approximate 30-foot buffer along both banks. In addition, approximately 50 feet of a storm water conveyance pipe that is discharging silt into the stream would be removed and replaced with grass and native stone. Signs would be placed around the stream mitigation area that clearly indicates that they are protected and that no disturbance is permitted. Bio-retention areas would be constructed in three locations around the parking lot. Annual monitoring reports would be submitted to both the Corps of Engineers and Tennessee Department of Environment and Conservation , Division of Water Pollution Control.

1.3 Purpose and Need. The SHBC is planning to relocate and encapsulate a stream channel to create access off Baumgartner Road and allow for the construction of a church parking lot. The area between the road crossings would be culverted due to the steep banks and safety concerns of the church staff.

1.4 Authorities and Decision Required. Section 301 of the Clean Water Act (CWA) prohibits the discharge of dredged or fill material into waters of the United States (US) unless authorized by the DA pursuant to Section 404 of the same Act. The unnamed tributary is a water of the United States as defined by 33 CFR 328. A DA permit under Section 404 is required for the work; therefore, the U.S. Army Corps of Engineers (Corps) must decide on one of the following:

- 1.4.1.issuance of a permit for the proposal
- 1.4.2.issuance of a permit with modifications or conditions
- 1.4.3.deny the permit

1.5 Other Approvals Required. Other federal, state and/or local approvals required for the proposed work are as follows:

1.5.1. TVA approval under Section 26a of the TVA Act. In addition to other provisions of its approval, TVA would require the applicant to employ best management practices to control erosion and sedimentation, as necessary, to prevent adverse aquatic impacts. TVA is a cooperating agency in the preparation of this environmental assessment.

1.5.2. Water quality certification from the State of Tennessee in accordance with Section 401(a)(1) of the Clean Water Act. Water quality certification was issued on 31 December 2008. (See Appendix C).

1.6 Existing Setting. Approximately 49.2 acres of commercial and residential area contributes to the flow in the subject channel. Immediately upstream of the site, the channel is encapsulated in a 36" diameter PVC conduit which extends 1200 feet to Carter Street. Two 36 x 48 inch grates allow storm water runoff from a store parking lot and Carter Street to enter the 36" conduit. Approximately 150 feet upstream from the conduit on Carter Street, the drainage ditch passes through another conduit, then extends another 500 feet along Baumgartner Road. The subject stream is an unnamed tributary to Caney Creek. Caney Creek is a State of Tennessee 303(d) listed stream. The 303(d) list is a compilation of the streams and lakes in Tennessee that are "water quality limited" or are expected to exceed water quality standards in the next two years and need additional pollution controls. The pollutant source for Caney Creek is pasture grazing and sewer system failure.

1.7 Scope of Analysis. The Corps determines its action area under 33 CFR 325 Appendix B and C. Normally the action area includes all waters of the U.S., as well as any additional area of non-waters where the Corps concludes there is adequate federal control and responsibility. The action area would include the upland areas in the immediate vicinity of the waters of the U.S. where the regulated activity occurs. Appendix B, National Environmental Policy Act (NEPA) Implementation Procedures for the Regulatory Program, states that for those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the federal action, i.e., the specific activity requiring a DA permit and any other portion of the project that is within the control or responsibility of the Corps (or other federal agencies). Appendix C, Procedures for the

Protection of Historic Properties, sets forth three tests, and requires that all must be met, for activities outside of waters of the U.S. to be included within the permit area and thus considered under the Corps scope of analysis. These are: 1) the activity would not occur but for the authorization of the work or structures within the waters of the U.S.; 2) the activity must be integrally related to the work or structures to be authorized within waters of the U.S., or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and 3) the activity must be directly associated (first order impact) with the work or structures to be authorized. An example of a linear project is given in Appendix C, which states "Such projects almost always can be undertaken without Corps authorization if they are designed to avoid affecting the waters of the U. S. Thus the "but for" test is not met by the entire project right-of-way (ROW)." The example further states that "some portion of the ROW, approaching the crossing, would not occur in its given configuration "but for" the authorized activity.

For these reasons and based upon the criteria set forth in Appendices B and C of the Corps' regulations, we have determined that the permit area for this application is the entire stream length on the subject site.

Once the scope of analysis is determined, alternatives to the proposed action (Section 3.0) and primary, secondary, and cumulative impacts (Section 4.0) must be considered and appropriate NEPA analysis to give these impacts in the decision. However, when analyzing secondary impacts, the strength of the relationship between those impacts and the regulated portion of the activity should be considered, i.e., whether or not the impacts are likely to occur even if the permit is not issued, in deciding the level of analysis and what weight to give these impacts in the decision. This analysis should consider whether another project, not requiring a permit, could likely occur at the site or in the vicinity, and whether its impacts would be similar to impacts of the project requiring a permit.

2.0 Public Involvement Process.

2.1 Public Notice General Information. On 19 December 2008 the Corps issued Joint Public Notice (JPN) No. 08-81 to advertise the proposed work (Appendix A). This JPN expired on 19 January 2009. The JPN was distributed

to a wide list of interested parties that included federal, state, and local agencies, elected officials, private/public organizations, news agencies, individuals, and adjacent property owners.

2.2 Public Notice Responses.

2.2.1. The US Fish and Wildlife Service (USFWS) responded to the JPN by letter dated 15 January 2009, stating that based on their records, it is their belief that there are no federally listed or proposed endangered or threatened plant or animal species in the impact area of the project, and that requirements of Section 7(c) of the Endangered Species Act of 1973, as amended, are fulfilled. No significant adverse effects to fish and wildlife, their habitats and human uses thereof are expected to result from the proposed work. (Appendix B).

2.2.2. The Tennessee Historical Commission (THC) responded to the public notice by letters dated 29 December 2008. THC's letter stated that based on the information submitted no National Register of Historic Places (NRHP) listed or eligible property would be affected by the undertaking (Appendix B).

2.2.3. The Tennessee Wildlife Resources Agency (TWRA) responded to the public notice by letters dated 16 January 2009. TWRA stated that proposed stream mitigation did not adhere to the Stream Mitigation Guidelines for the State of Tennessee (Guidelines) written by the Tennessee Department of Environment and Conservation (TDEC), Division of Water Pollution Control, Natural Resources Section. The applicant proposes to mitigate for the stream impacts by removal of 50 feet of storm water conveyance pipe that is discharging silt into the stream and replace it with grass and native stone, and establish a riparian buffer on 310 linear feet of stream. According to TWRA, the applicant would receive 50 feet of replacement credit for the pipe removal, and 75 feet of replacement credits for the 310 linear feet of stream habitat at a 4:1 ratio. The proposed stream mitigation would generate 125 credits, but less than the 300 credits necessary to mitigate under the Guidelines. Also, if the width of the vegetated riparian buffer is not 50 feet along both banks, the credit ratio could be reduced appropriately under the Guidelines. TWRA requested that

the mitigation site be marked with signs to prevent inadvertent vegetative destruction by maintenance workers and monitored for a period of years. TWRA requests that the permit be denied if the applicant can't comply with the Guidelines (Appendix B).

2.3 Applicant's Response/Rebuttal and Analysis/Resolution. The THC, TWRA and USFWS responses to the JPN were not sent to SHBC.

2.4 Consideration of Comments. TWRA indicated that the project as proposed should adhere to the stream mitigation guidelines for the State of Tennessee. On 31 December 2008, the TDEC determined the proposed impacts to 450' of stream, with adherence to permit conditions, would not violate state water quality standards and issued water quality certification for the proposed activity.

On 21 January 2009, Forrest McDaniel of this office, contacted Mr. Robert Todd with TWRA about their 16 January 2009 letter. Mr. Todd indicated that the stream mitigation effort had not met TDEC's guidelines, and TWRA recommended that the project not be authorized as proposed. We discussed the existing stream condition and proposed mitigation. I explained that the Corps, TVA and TDEC had been onsite to review the impacts and proposed mitigation. Mr. Todd noted that he had not seen the site and was not aware of the history of the stream channel. He stated he was only going by the conditions in the State's Guidelines for Stream Mitigation. We both agreed that the guidelines were just that, guidelines. The Corps agrees with TDEC that SHBC has justified their stream mitigation efforts. We are satisfied that SHBC has taken practicable steps to avoid and minimize the stream impacts and that all the issues have been adequately considered.

3.0 Alternatives.

3.1 Introduction. This section discusses alternatives as required by 33 CFR 320.4(a)(2) and 40 CFR 230.10. The relevant environmental issues identified in Section 4.0 were used to formulate the alternatives. The alternatives that were given detailed consideration are listed in Section 3.2. Alternatives not considered in detail are described in Section 3.4.

3.2 Description of Alternatives.

3.2.1 No Action. This alternative is one that results in no construction or work requiring a Corps permit. No Action may be brought by (a) SHBC electing to modify its proposal to avoid jurisdictional work, or (b) by denial of the permit.

3.2.2 The Applicant's Proposed Action. The proposed action and mitigation are described in Sections 1.2 and 1.2.1.

3.2.3. Applicant's Proposed Action and Special Conditions. This alternative consists of the applicant's final proposed action identified in Section 3.2.2 above with the inclusion of special conditions to further minimize/mitigate unavoidable environmental impacts to the maximum extent practicable.

3.2.4. Other Alternatives. Other alternatives involving different designs or sites may exist. However, the resultant degree of impact would be commensurate with the impacts of the proposed action. These alternatives might not satisfy the applicant's purpose and need.

3.3 Comparison of Alternatives.

3.3.1. No Action. This alternative would result if no work were performed in waters of the United States, including wetlands. No Action would also be brought about if the DA permit were denied. The potential environmental impacts described in Section 4.0 would not occur. Conversely, the expected benefits also described in that section would not be achieved. Finally, No Action would not satisfy SHBC's stated purpose and need.

3.3.2. Applicant's Proposed Action. The proposed action described in Section 1.2 would have potential adverse and beneficial environmental effects. These potential effects are discussed in Section 4.0.

3.3.3. Applicant's Proposed Action with Special Conditions. This alternative would result in reduced impacts with similar benefits to the alternative described in Section 3.3.2. Special permit conditions have been developed and recommended to further reduce environmental impacts (Section 5.5). The recommended conditions are reasonably enforceable and would afford appropriate and practicable environmental protection.

3.3.4. Other Alternatives. No other sites were considered, as the purpose of the proposal is the expansion of existing facilities. An alternative site would have to be outside the community since no contiguous 10 acre area is available within the city limits. Location is a critical element to the church because its existence linked the immediate South Harriman community. Relocation would, in effect, change the church and thus endanger its current success by exclusion of some members. An alternative location outside the city goes against the churches historical context. The church has been in existence for over 100 years at or near its current location. The first service was held in a tent, and its first building was dedicated in 1907. Across the street from its first building, the current building was dedicated in 1938. The church has grown from a 12 person congregation to its current size of 1030 resident members. Six years ago the church purchased the 5.9 adjacent acres to accommodate its increasing needs. Therefore this alternative would not be practicable.

3.4 Least Environmentally Damaging Practicable Alternative. It is the applicant's responsibility to demonstrate that there are no practicable alternatives that would be less damaging to the aquatic environment than the applicant's preferred alternative. Pursuant to the analysis above in Sections 3.1, 3.2, and 3.3, the Corps concludes that the discharge of fill material into waters of the U.S. for expansion of SHBC would be the least environmentally damaging practicable alternative. This combined decision document will, therefore, assess the direct impacts of the applicant's proposed alternative in light of Federal statutes, regulations, and policies. The public interest review factors are discussed in detail following the section of this document.

4.0 Environmental and Public Interest Factors Considered

4.1 Introduction. 33 CFR 320.4(a) states the decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. The following sections show which factors that are relevant in this proposal, and if relevant, provides a concise description of the impacts.

4.2 Public Interest Review:

4.2.1. **Conservation.** The proposed action would result in the relocation of 150 linear feet and the encapsulation of 300 feet of an unnamed tributary. Encapsulation of the unnamed tributary is a continuation of the existing conditions upstream of the channel where the church and grocery store parking areas currently cover the channel. The majority of the watershed contributing to the drainage channel is covered in asphalt or rooftops. These impervious areas are well known as sources of oil, sediment, and temperature pollution. Mitigation structures are planned to filter runoff from existing and planned parking areas in the development area. These structures would include filter strips and bio-retention basins containing plantings of small trees and low lying plants. Special conditions have been developed to reduce the unavoidable adverse environmental impacts identified.

4.2.2. **Economics (33CFR 320.4(q)).** Construction activities would provide a minor short-term stimulus to the local economy from temporary employment. The local economic base would likely benefit from additional tax revenues, and higher property values.

4.2.3. **Aesthetics.** Most of the project area lies within highly disturbed open area where previously removed vegetation has been maintained. Although modifications have occurred due to human activity, the proposed action would disrupt area aesthetics both during and after construction. The planting of trees and shrubs, proposed in the mitigation area, will improve aesthetics

and community livability by providing recreational and wildlife areas.

- 4.2.4. **General Environmental Concerns** (33 CFR 320.4(p)). This is a broad factor almost synonymous with the area's quality of life. All relevant issues falling under this heading have been evaluated in the EA. Special conditions and mitigation have been developed to reduce the unavoidable adverse environmental impacts identified.
- 4.2.5. **Wetlands** (33 CFR 320.4(b)). There are no wetlands onsite.
- 4.2.6. **Historic and Cultural Resources** (33 CFR 320.4(e)). Based on the data recovery and the letter from the SHPO dated 29 December 2008, the agencies conclude that the effects of the construction on historic properties have been taken into account and that the responsibilities under Section 106 of the National Historic Preservation Act have been met.
- 4.2.7. **Fish and Wildlife Values** (33 CFR 320.4(c)). FWS letter dated 15 January 2009, stated that according to their records, there are no federally listed or proposed endangered or threatened plant or animal species in the impact area of the project, and that requirements of Section 7(c) of the Endangered Species Act of 1973, as amended, are fulfilled.
- 4.2.8. **Flood Hazards**. There are no wetlands on this property that provide water storage and filtration. Some lowland floodwater storage capacity would be lost as a result of the encapsulation of 300 feet of stream. As part of the proposed mitigation plan, storm water runoff from future parking lots and roofs would be routed and filtered through landscape features. Storm water peak flows would be retained and allowed to settle in a detention basin constructed in the lowest end of the property. As the project is minor in size compared to the surrounding area, this impact would be considered to be no more than minimal.

- 4.2.9. **Floodplain Values** (33 CFR 320.4(l)). The project site lies within the Roane County flood insurance study area: Floodway Map #47145C0087F (panel 87 of 335). The proposed location is not in a floodplain.
- 4.2.10. **Land Use.** The church has been in existence for over 100 years at or near its current location. The current building was dedicated in 1938. The project would be constructed wholly within lands owned and managed by SHBC.
- 4.2.11. **Navigation** (33 CFR 320.4(o)). Not applicable to the proposed action.
- 4.2.12. **Shore erosion and accretion.** Not applicable to the proposed action.
- 4.2.13. **Recreation.** The stream that would be affected by this action is too shallow to be suitable for uses such as canoeing or kayaking. Fishing opportunities appear to also be limited. The proposed action would have negligible adverse effects on the recreational uses occurring on the affected stream.
- 4.2.14. **Water Supply** (33 CFR 320.4(m)). A search of our permit database did not reveal the existence of any public or private potable water supply in project area. The proposed action would not affect the availability of water or opportunities to reduce demand and improve efficiency.
- 4.2.15. **Water Quality** (33 CFR 320.4(d)). The existing drainage channel at the subject site extends 760 feet, north to south along the West boundary of the property. The typical channel is approximately 3 feet in width and 4 inches deep. The overall channel measures approximately 15 feet in width and 4 feet in depth, and lies approximately parallel and adjacent to Baumgartner Road. Approximately 49.2 acres of commercial and residential area contributes to the flow in the subject

channel. Immediately upstream of the site, the channel is encapsulated in a 36" diameter PVC conduit which extends 1200 feet to Carter Street. Two 36 x 48 inch grates allow storm water runoff from a store parking lot and Carter Street to enter the 36" conduit. Approximately 150 feet upstream from the conduit on Carter Street, the drainage ditch passes through another conduit, then extends another 500 feet before the channel is encapsulated along Baumgartner Road. The subject channel is in the basin of Caney Creek at mile 7.3. TDEC considers Caney Creek as a impaired water of the state on the Section 303(d) list. The pollutant source is listed as "pasture grazing and (sewer) collection system failure. The constituent of concern in Caney Creek is microbiological forms from the fecal waste-primarily from sewage collection system failure and pasturing cattle. No sources of these constituents can be found in the subject area. Long-term adverse impacts would be minimal. Water quality certification from the State of Tennessee was issued on 31 December 2008. (See Appendix C). With mitigation, downstream affects on Caney Creek would not worsen pollution levels there not adversely impact aquatic life.

- 4.2.16. **Energy Needs** (33 CFR 320.4(n)). The proposed action would have negligible effects on energy consumption or generation.
- 4.2.17. **Safety**. The project would include the relocation and encapsulation of the stream channel to create access off Baumgartner Road and allow for the construction of a church parking lot. The area between the road crossings would be culverted due to the steep banks and safety concerns of the church. Decreased safety would become a factor during construction, but provided an appropriate construction plan is implemented, impacts would be relatively minor.
- 4.2.18. **Food and Fiber Production**. The proposed action would have no appreciable effect on food and fiber production.

4.2.19. **Mineral Needs.** The proposed action would have no appreciable effect on mineral needs.

4.2.20. **Considerations of Property Ownership.** DA permits do not convey any property rights, either in real estate or material, exclusive privileges, or authorize any injury to property or invasion of rights. Furthermore, they do not sanction the infringement of federal, state, or local laws or regulations. Therefore, our DA permit process has no bearing on property ownership negotiations.

4.3 Cumulative and Secondary Impacts. The consideration of possible secondary or cumulative effects of construction projects begins in the early planning and scoping stages. Planning organizations and development/resource protection agencies are contacted and area development trends (as well as the project's area of influence) are studied. By studying long-term planned and potential development for the area influenced by the project, the indirect impacts of a SHBC expansion can be more accurately assessed. Projects to expand existing facilities generally have a lower potential for indirect effects than construction on new location. Virtually all of this proposed project activities would occur adjacent to the current church location on a highly disturbed landscape.

Secondary impacts of the proposed project include potential for sediment reaching adjacent inundated wetlands and tributaries. These impacts would be minimized by the requirement that all work limits of the project site be clearly labeled in the field, and requiring SHBC to take appropriate measures to control erosion of the newly constructed project.

This project and any other proposed projects would be evaluated on a case-by-case basis for a DA permit if waters of the U.S. were proposed to be filled. Projecting the reasonably foreseeable future actions is difficult at best. Clearly, the proposed action is reasonably foreseeable. However, the actions by others that may affect the same resources are not as clear. Projections of those actions must rely on judgment as to what is reasonable based on existing trends and, where available, projections from qualified sources.

Reasonably foreseeable does not include unfounded or speculative projections. In this case, reasonably foreseeable future actions include:

- Impacts on wildlife habitat,
- Continued growth in population and residential development,
- Continued growth of commercial development,
- Continuation of existing land use patterns in the area and/or additional development of the area,
- Continued application of environmental requirements such as those under the Clean Water Act, and;
- Implementation of various programs to deal with non-point sources of water pollution and to restore degraded environments,

These foreseeable actions can be identified as cumulative and/or secondary impacts; however, determining the magnitude and significance of cumulative effects; modifying to avoid, minimize or mitigate significant cumulative effects, and planning for monitoring and adaptive management would have to be addressed on a case-by-case basis.

General Information

Consideration of cumulative effects requires a broader perspective than examining just the direct and indirect effects of a proposed action. It requires that reasonably foreseeable future impacts be assessed in the context of past and present effects to each important resource. Often it requires consideration of a larger geographic area than just the immediate "project" area. One of the most important aspects of cumulative effects assessment is that it requires consideration of how actions by others (including those actions completely unrelated to the proposed action) have and will affect the same resources. In assessing cumulative effects, the key determinant of importance or significance is whether the incremental effect of the proposed action will alter the sustainability of the resource in light of other effects that resource has experienced up until the present and/or will experience in the future.

Cumulative environmental effects for the proposed facilities were assessed in accordance with guidance provided by the President's Council on Environmental Quality (USEPA, EPA 315-R-99-002, May 1999). This guidance provides an eleven-step process for identifying and evaluating cumulative effects in NEPA analyses. These eleven steps are grouped into three general phases: Scoping, Describing the affected environment, and

Determining the environmental consequences.

Scoping: In this phase, the cumulative effects issues and assessment goals are established, the spatial and temporal boundaries are determined, and the reasonably foreseeable future actions are identified. In the current assessment, the cumulative effects issue is to determine if the sustainability of any of the resources is adversely affected. The goal is to determine the incremental impact to key resources that would occur should the proposal be permitted.

The spatial boundary (scope of work) considered for regulatory purposes is normally in the general area of the proposed work. However, this area may be expanded on a case-by-case basis if some particular resource condition necessitates broadening the boundary.

Describing the Affected Environment: This phase of cumulative effects assessment involves characterizing the resources in terms of their response to change and capacity to withstand stress, characterizing the stresses affecting the resources, and defining the baseline condition for the resources. Descriptions of affected resources are summarized in section 3.0. of this Environmental Assessment.

Determining the Environmental Consequences: This phase involves identification of important cause and effect relationships; determining the magnitude and significance of cumulative effects; modifying to avoid, minimize or mitigate significant cumulative effects, and planning for monitoring and adaptive management. These aspects are discussed in section 3.0. of this Environmental Assessment under appropriate resource headings. Overall, the proposal is not anticipated to have a substantial cumulative or secondary effect upon the existing environment and the sustainability of important resources would not be adversely affected.

5.0. Findings

5.1 404(b)(1) Determination.

5.1.1. General: The purpose of Section 404(b)(1) of the Clean Water Act is to restore and maintain the chemical and physical, and biological

integrity of the waters of the United States through the control of discharges of dredged or fill material. Controls are established through restrictions placed on the discharges in Guidelines published in 40 CFR 230.

5.1.2. Restrictions on the Discharge: Section 230.10 requires that the discharge meet certain restrictions in order to be authorized. The project is to be evaluated and comply with the following restrictions: (a) there would be no other practicable alternatives to the proposal that would have less adverse impacts on the aquatic environment, (b) that the discharge would not adversely impact water quality, violate State water quality standards, toxic effluent standards, or jeopardize the continued existence of a threatened or endangered species as identified under the Endangered Species Act, (c) the discharge would not cause or contribute to the significant degradation of waters of the United States, and (d) the project would be designed in such a manner as to minimize to the extent possible the adverse impacts on the aquatic environment.

5.1.3. Factual Determination: Based on the probable impacts addressed above, compliance with the restrictions, and all other information concerning the fill materials to be used, the proposed work complies with the Guidelines and the intent of Section 404(b)(1) of the Clean Water Act.

5.1.4. Evaluation of Compliance Checklist: A check in a block denoted by an asterisk indicates that the proposal does not comply with Section 404(b)(1) guidelines.

ALTERNATIVES TEST

Are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into "waters of the United States" or at other locations within these waters?

[Yes(*) No X]

If the project is in a special aquatic site and is not water-dependent, has applicant clearly demonstrated that there are no practicable alternative sites available?

[Yes X No(*)]

SPECIAL RESTRICTIONS

Will the discharge violate:
state water quality standards?

[Yes(*) No X]

violate toxic effluent standards (under Section 307 of the Act)?

[Yes(*) No X]

jeopardize endangered or threatened species or their critical habitat?

[Yes(*) No X]

violate standards set by the Department of Commerce to protect marine sanctuaries?

[Yes(*) No X]

Evaluation of the physical/chemical and biological characteristics and anticipated changes indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s).

[Yes(*) No X]

(x) based on available information, the material is not a carrier of contaminants

() the levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas.

() acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site.

OTHER RESTRICTIONS

Will the discharge contribute to significant degradation of "waters of the U. S." through adverse impacts to:

human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife, and special aquatic sites?

[Yes(*)__ No X_]

life stages of aquatic life and other wildlife? [Yes(*) No X]

diversity, productivity, and stability of the aquatic ecosystem, such as loss of fish or wildlife habitat, or loss of the capacity of wetland to assimilate nutrients, purify water, or reduce wave energy?

[Yes(*) No X]

recreational, aesthetic and economic values? [Yes(*) No X]

ACTIONS TO MINIMIZE POTENTIAL ADVERSE IMPACTS (MITIGATION):

Will all appropriate and practicable steps (40 CFR 230.70-77) be taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem?

[Yes X No(*)]

The mitigation measures included in the proposed action together with the standard erosion and sedimentation controls included in the DA permit conditions would adequately minimize pollution or adverse effects to the affected ecosystem.

5.2 Clean Air Act General Conformity Rule Review. The proposed project has been analyzed for conformity applicability, pursuant to regulations implementing Section 176(c) of the Clean Air Act and it has been determined that the activities proposed under this permit will not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility, and cannot be practicably controlled by the Corps, and, for these reasons, a conformity determination is not required for a permit.

5.3 Environmental Justice. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects on its programs, policies, and activities on minority and low-income populations. Through our public involvement process (Section 2), we have offered adjacent property owners, local groups, community leaders, elected officials, agencies, and general public (includes low-income and minority populations) an opportunity to express their views and participate in a decision-making process that could affect their well-being. The proposed activities would only result in minor adverse effects. If any impact on minority or low-income populations does occur, it would not have disproportionately high and adverse human health or environmental effects. No one identifying himself/herself as a low-income or minority person indicated any objection to the proposal. Therefore, the requirements/provisions of EO 12898 have been met.

5.4 Public Hearing Decision. Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action and which affords the public an opportunity to present their views, opinions, and information on such permit actions. A public hearing will be held in connection with the consideration of a DA permit application whenever a public hearing is needed for making a decision on such permit application. JPN 08-81 contained a statement that any person may request, in writing, within the comment period specified in the notice, that a public hearing be held to consider the application. No requests for a public hearing were received during the JPN comment period.

5.5 Special Permit Conditions Consideration. The following special permit conditions are typically included in most DA permits, and are necessary to comply with federal law, while affording appropriate and practicable environmental protection.

1. The work must be in accordance with any plans attached to this permit. You must have a copy of this permit available on the site and ensure that all contractors are aware of its conditions and abide by them.
Justification: Recommended at 33 CFR 325, Appendix A.

2. You must institute and maintain strict erosion and sediment control measures for the life of the project and all disturbed areas be properly stabilized as soon as practicable to prevent erosion. Only one point of ingress and egress should be utilized and all disturbed bank areas shall be stabilized and reseeded. *Justification: To minimize turbidity and water quality impacts.*
3. Disturbance to the soils and riparian vegetation shall be kept to a minimum during construction. Best Management Practices shall be implemented to maintain effective erosion control. *Justification: To minimize water quality impacts and maintain buffers between upland development and the aquatic resource.*
4. The discharge shall consist of suitable, non-erodible material free of soil, toxic pollutants, or other contaminants in toxic amounts. *Justification: To minimize water quality impacts*
5. You must contact this office upon completion of the work to schedule an onsite inspection to determine if all work related to this Department of the Army permit has been successfully completed. *Justification: To ensure project completion is satisfactory and meets permit conditions.*
6. Compensatory stream mitigation for the encapsulation of approximately 300 linear feet of the unnamed tributary to Caney Creek shall occur onsite within the downstream section of the unnamed tributary. Trees shall be planted on 15-foot centers in alternating rows in an approximate 30-foot buffer along both banks. Only native tree species (locally occurring) shall be planted. Trees should be at least 0.5" dbh. No one species shall comprise more than 25% of the total. Planting shall occur from late November until the end of March. *Justification: To minimize water quality impacts and maintain buffers between upland development and the aquatic resource.*
7. Additional stream mitigation shall occur with the removal of approximately 50 feet of a storm water conveyance pipe that is discharging silt into the stream and replaced with grass and native stone. Bio-retention areas will be constructed in three locations around the parking lot. *Justification: To minimize water quality impacts.*

8. The relocation of approximately 150 feet of the unnamed tributary shall be conducted in the dry. Vegetated plugs (existing ground) shall be left intact at the up-and downstream segments of the relocated channel. After completion of the new channel the downstream plug shall be removed first and then the upstream. Flow shall be conveyed through the new channel for approximately 72 hours prior to backfill of the old channel. *Justification: To minimize water quality impacts.*
9. The placement of 300 feet in a culvert shall occur in the dry. The culvert shall be embedded in the stream substrate to allow for accumulation of natural deposits. Any and all culvert seals used to connect sections shall be sealed such that flow will not be lost or diminished through the culvert. *Justification: To minimize water quality impacts.*
10. The stream mitigation shall be monitored with annual reports submitted to this office. The report shall document tree survival, both herbaceous and woody species bank coverage, bank stabilization and in-stream habitat and substrate stability. The first monitoring report shall be submitted by October 31, 2009 and each subsequent year until the Corps notifies the permittee that reporting can be terminated. (If no work has been completed by the due date of the first monitoring report then a no work report shall be submitted.) *Justification: To ensure project completion is satisfactory and meets permit conditions.*
11. Signs shall be placed around the stream mitigation area that clearly indicate that they are protected and that no disturbance is permitted. *Justification: To minimize water quality impacts and maintain buffers between upland development and the aquatic resource.*

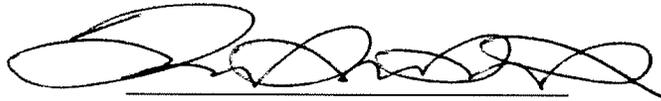
5.6 Findings of No Significant Impact. After fully considering the relevant environmental factors discussed in this document, information obtained from the applicant, and cooperating federal and state agencies, I have concluded that issuance or denial of the requested permit would not constitute a major federal action that would significantly affect the quality of the human environment. This constitutes a Findings of No Significant Impact (FONSI). Therefore, the preparation of an Environmental Impact Statement is not

required. This FONSI was prepared pursuant to paragraph 7a of Appendix B, 33 CFR 325.

5.7 Public Interest Determination. I have reviewed the application, responses to the Public Notice, and the Final Environmental Assessment. One adverse comment was received from TWRA concerning the proposal. After a discussion about existing site conditions and proposed mitigation, TWRA agreed that the "Proposed Action with Special Conditions" would only result in relatively minor adverse environmental impacts. SHBC has offered appropriate onsite mitigation for stream loss impacts and the cultural resources issues have been adequately considered in compliance with Section 106 and Corps historic property regulations. Having weighed these potential benefits that may be accrued against the reasonably foreseeable detrimental effects, I conclude that permit issuance would not be contrary to the public interest.

FOR THE COMMANDER:

3/19/09
Date



Forrest E. McDaniel, Chief
Eastern Regulatory Section
Regulatory Branch
Operations Division

Appendix A

Public Notice



**US Army Corps
of Engineers.**

Nashville District

Public Notice

Public Notice No. 08-81

Date: December 19, 2008

Application No. 2008-01425

Expires: January 19, 2009

Please address all comments to:
Nashville District Corps of Engineers, Regulatory Branch
3701 Bell Road, Nashville, TN 37214
Attn: Forrest E. McDaniel

JOINT PUBLIC NOTICE US ARMY CORPS OF ENGINEERS AND TENNESSEE VALLEY AUTHORITY

SUBJECT: Proposed Discharge of Fill Material into Waters of the United States Associated with the Expansion of South Harriman Baptist Church in an Unnamed Tributary of Caney Creek, Tennessee River Mile 562.3 Right Bank, Roane County, Tennessee

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army Permit (DA) pursuant to **Section 404 of the Clean Water Act**. The proposed stream relocation and encapsulation will also require approval from Tennessee Valley Authority (TVA) pursuant to **Section 26A of the TVA Act** and the Tennessee Department of Environment (TDEC). A permit for the described work will not be issued until a certification or waiver of certification, as required under **Section 401 of the Clean Water Act**, has been received from TDEC.

APPLICANT: Charles Kerr, Trustee
South Harriman Baptist Church
626 Ruritan Road
Harriman, TN 37748

AGENT: James Burnham, PE
Lackey & Associates, Inc.
P.O. Box 458
Oliver Springs, TN 37840

LOCATION: Project is located south of Highway 27 and just north of Caney Creek on Ruritan Road in South Harriman, Roane County (Latitude 35.9146° N., Longitude -85.5638° W.).

DESCRIPTION: The proposed work would include the relocation of 150 linear feet and the encapsulation of 300 feet of an unnamed tributary at South Harriman Baptist Church. Surrounding land use is primarily residential and some commercial. The channel flows approximately 760 feet north to south along the west boundary of the property. Immediately

upstream of the subject site the stream is encapsulated in a 36-inch pipe. The typical stream flow is 3 feet in width and 4 inches deep while the overall channel dimensions are 15 feet in width and 4 feet in depth.

MITIGATION: The applicant would provide onsite compensatory mitigation for the loss of stream due to culverting (minus the road crossings). In stream habitat and channel improvements and a riparian buffer would be established on the downstream 310 linear feet of the property. In addition, approximately 50 feet of a storm water conveyance pipe that is discharging silt into the stream would be removed and replaced with grass and native stone. Bio-retention areas would be constructed in three locations around the parking lot. Annual monitoring reports would be submitted to both the Corps of Engineers and Water Pollution Control.

Plans and a location map of the proposed work and mitigation site are included with this notice.

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

The Regulatory Branch Archeologist conducted a file search at the Tennessee Division of Archaeology (TN DOA). Based on the file search conducted at the TN DOA and the level of disturbance from residential and commercial development the Corps has determined that the project as proposed has no potential to affect historic properties eligible for listing in the National Register of Historic Places. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or

properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. Copies of this notice are being sent to the office of the State Historic Preservation Officer.

Based on available information, the proposed work will not destroy or endanger any federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and, therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Other federal, state, and/or local approvals required for the proposed work are as follows:

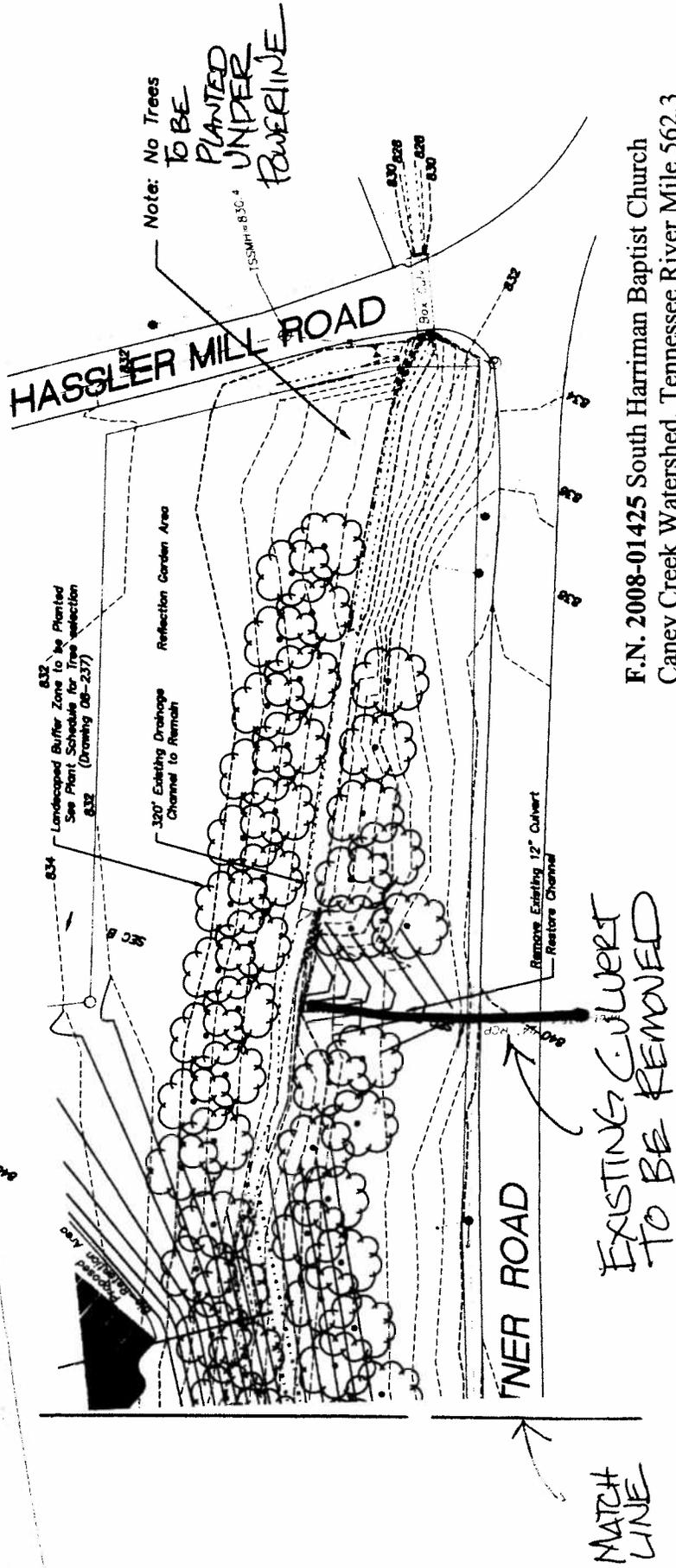
a. TVA approval is required under Section 26a of the TVA act for the proposed work. In addition to other provisions of its approval, TVA would require the applicant to employ best management practices to control erosion and sedimentation, as necessary, to prevent adverse aquatic impacts.

b. Water Quality Certification from the State of Tennessee, Department of Environment and Conservation, is required for the proposed work in accordance with Section 401(a)(1) of the Clean Water Act.

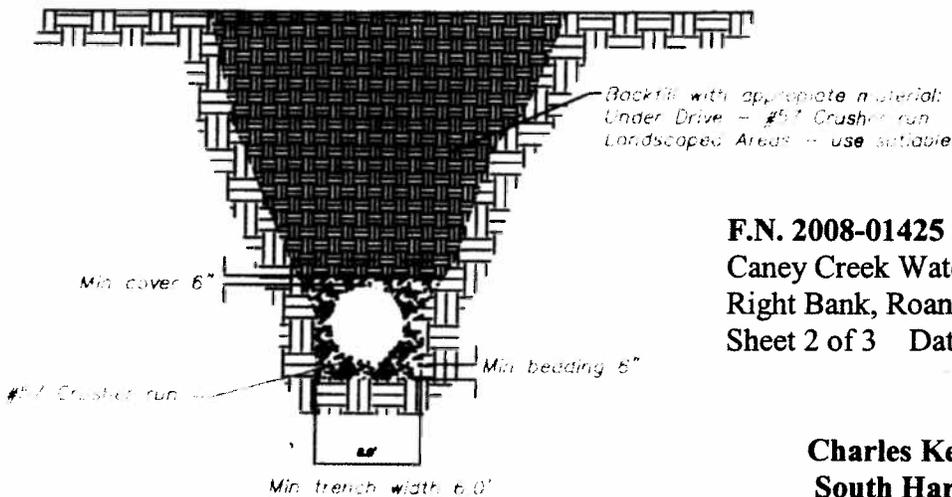
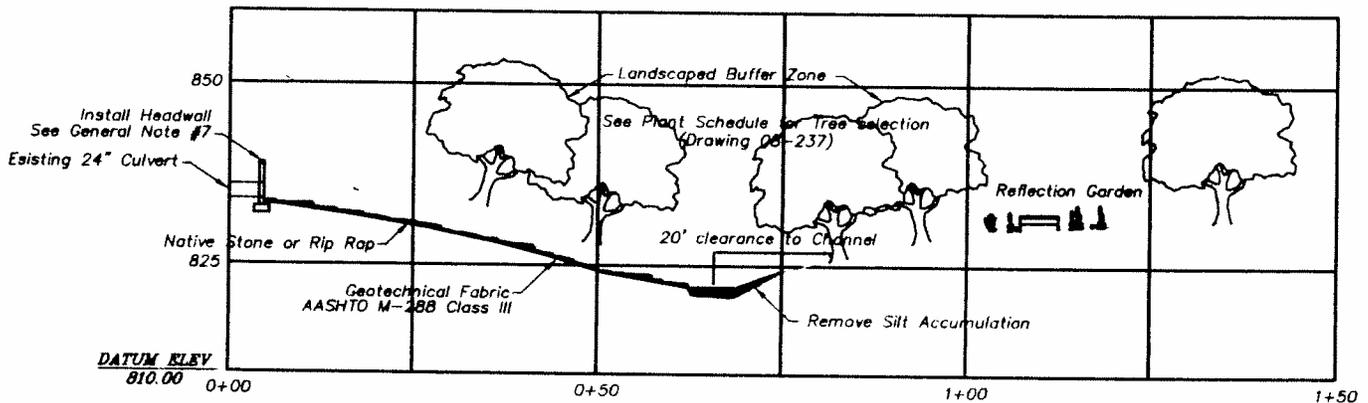
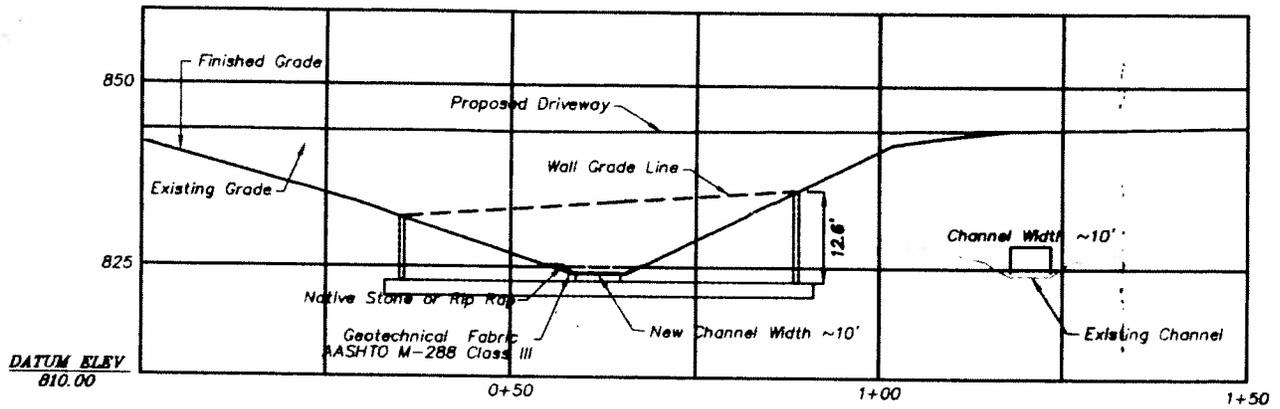
Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

Written statements received in this office on or before January 19, 2009 will become a part of the record and will be considered in the determination. Any response to this notice should be directed to the Regulatory Branch, Attention: Forrest E. McDaniel, at the above address, telephone (615) 369-7511. It is not necessary to comment separately to TVA since copies of all comments will be sent to that agency and will become part of its record on the proposal.

Charles Kerr, Trustee
 South Harriman Baptist Church
 626 Ruritan Road
 Harriman, TN 37748



F.N. 2008-01425 South Harriman Baptist Church
 Caney Creek Watershed, Tennessee River Mile 562.3
 Right Bank, Roane County, Tennessee



F.N. 2008-01425 South Harriman Baptist Church
 Caney Creek Watershed, Tennessee River Mile 562.3
 Right Bank, Roane County, Tennessee
 Sheet 2 of 3 Date: 8/22/2008

Charles Kerr, Trustee
 South Harriman Baptist Church
 626 Ruritan Road
 Harriman, TN 37748



SITE 

F.N. 2008-01425 South Harriman Baptist Church
Caney Creek Watershed, Tennessee River Mile 562.3
Right Bank, Roane County, Tennessee
Sheet 3 of 3 Date: 8/22/2008

Appendix B

**United States Fish and Wildlife Service and
Tennessee Historical Commission Responses
Tennessee Wildlife Resources Agency**



United States Department of the Interior

FISH AND WILDLIFE SERVICE
446 Neal Street
Cookeville, TN 38501

January 15, 2009

Lt. Col. Bernard R. Lindstrom
Regulatory Branch
Nashville District Corps of Engineers
3701 Bell Road
Nashville, Tennessee 37214

Attention: Mr. Forrest McDaniel

Subject: Public Notice No. 08-81, Application No. 2008-01425, Charles Kerr (South Harriman Baptist Church), proposed stream impacts to facilitate church expansion, unnamed tributary of Caney Creek, Roane County, Tennessee.

Dear Colonel Lindstrom:

Fish and Wildlife Service (Service) personnel have reviewed the public notice for the subject application. The project would include the relocation of 150 linear feet of stream and encapsulation of 300 feet of stream. The applicant has proposed stream habitat and channel improvements as mitigation for impacts that would result from the stream encapsulation. This would include establishment of a riparian buffer along a 310-foot section of stream. In addition, approximately 50 feet of a storm water conveyance pipe that currently transports sediment to downstream areas would be removed and replaced with grass and stone.

Endangered species collection records available to the Service do not indicate that federally listed or proposed endangered or threatened species occur within the impact area of the project. We note, however, that collection records available to the Service may not be all-inclusive. Our data base is a compilation of collection records made available by various individuals and resource agencies. This information is seldom based on comprehensive surveys of all potential habitats and thus does not necessarily provide conclusive evidence that protected species are present or absent at a specific locality. However, based on the best information available at this time, we believe that the requirements of section 7 of the Endangered Species Act of 1973, as amended, are fulfilled. Obligations under section 7 of the Act must be reconsidered if (1) new information reveals impacts of the proposed action that may affect listed species or critical habitat in a manner not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered during this consultation, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

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Stream replacement and enhancement techniques should be carefully implemented. Based on adherence to practices in accordance with the Stream Mitigation Guidelines for the State of Tennessee, we would not object to authorization of this project.

Thank you for this opportunity to review the subject notice. Please contact David Pelren of my staff at 931/528-6481 (ext. 204) if you have questions about our comments.

Sincerely,



for Lee A. Barclay, Ph.D.
Field Supervisor

xc: Darryl Williams, EPA, Atlanta, GA
Dan Eagar, TDEC, Nashville, TN
Robert Todd, TWRA, Nashville, TN



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

December 29, 2008

Mr. Forrest McDaniel
United States Army Corps of Engineers
Nashville District
Regulatory Branch
3701 Bell Road
Nashville, Tennessee 37214

RE: COE-N, PN# 08-81/BAPTIST CHURCH EXPANSION, HARRIMAN, ROANE COUNTY

Dear Mr. McDaniel:

The Tennessee State Historic Preservation Office has reviewed the above-referenced undertaking received on Monday, December 29, 2008 for compliance by the participating federal agency or applicant for federal assistance with Section 106 of the National Historic Preservation Act. The Procedures for implementing Section 106 of the Act are codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739).

After considering the documentation submitted, we concur that there are no National Register of Historic Places listed or eligible properties affected by this undertaking. This determination is made either because of the location, scope and/or nature of the undertaking, and/or because of the size of the area of potential effect; or because no listed or eligible properties exist in the area of potential effect; or because the undertaking will not alter any characteristics of an identified eligible or listed property that qualify the property for listing in the National Register or alter such property's location, setting or use. Therefore, this office has no objections to your proceeding with the project.

If your agency proposes any modifications in current project plans or discovers any archaeological remains during the ground disturbance or construction phase, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act. You may direct questions or comments to Jennifer M. Barnett (615) 741-1588, ext. 105. This office appreciates your cooperation.

Sincerely,

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

EPM/jmb

31 DEC 2008

2008-01425 → FEM
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TENNESSEE WILDLIFE RESOURCES AGENCY

ELLINGTON AGRICULTURAL CENTER
P. O. BOX 40747
NASHVILLE, TENNESSEE 37204

January 16, 2009

Forrest McDaniel
Nashville District Corps of Engineers
Regulatory Branch
3701 Bell Road
Nashville, TN 37214

Re: Public Notice #08-81
Applicant: South Harriman Baptist Church - Charles Kerr, Trustee
Proposed Relocation of 150 Linear Feet and the Encapsulation of 300 Feet of an
 Unnamed Tributary of Caney Creek
Unnamed Tributary of Caney Creek, Tennessee River Mile 562.3, Right Bank.
Roane County, Tennessee

Dear Mr. McDaniel:

The applicant proposes to relocate 150 linear feet and encapsulate 300 feet of an unnamed tributary of Caney Creek in Roane County. The applicant proposes to mitigate on-site for the proposed stream impacts through permittee responsible mitigation utilizing 50 feet of stream channel replacement by the removal of 50 feet of concrete culvert and the enhancement of 300 feet of stream channel.

It is the opinion of the Tennessee Wildlife Resources Agency that the proposed stream mitigation is insufficient. The public notice does not mention whether a watershed plan or functional assessments have been developed for this project. If this information is unavailable to guide mitigation planning and determine if the proposed mitigation will offset the proposed impacts, it is our opinion that mitigation compensation should be compliant with the "Stream Mitigation Guidelines for the State of Tennessee" by the Tennessee Department of Environment and Conservation, Division of Water Pollution Control, Natural Resources Section.

The applicant proposes to mitigate for the stream impacts by removal of 50 feet of storm water conveyance pipe that is discharging silt into the steam and replace it with grass and native stone and establish a riparian buffer on 300 linear feet of stream and improve in-stream habitat. The applicant could receive 50 feet of credit for the pipe removal, as replacement credit, and 75 credits for the Enhancement I credit, at a 4:1 ratio, for the 300 linear feet of in-stream habitat and channel improvements, and the establishment of a vegetated riparian buffer according to the "Stream Mitigation Guidelines for the State of Tennessee" by the Tennessee Department of Environment and Conservation, Division of Water Pollution Control, Natural Resources Section; provided the vegetated riparian buffer would be 50 feet in width along both banks. The proposed stream mitigation would generate 125 credits but far less than the 300 credits necessary to

The State of Tennessee

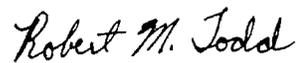
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mitigate for the 300 feet of encapsulation. If the width of the vegetated riparian buffer is not 50 feet along both banks, the credit ratio should be reduced appropriately. Also, we request that the mitigation site be marked with signs, to prevent inadvertent vegetative destruction by maintenance workers, the stream relocation and enhancement site be monitored for a period of years for hydrological and vegetative success and submit annual reports to regulatory agencies, and that the mitigation site be protected perpetually with a legal instrument.

The Tennessee Wildlife Resources Agency requests that this permit be held in abeyance until the applicant provides an appropriate stream mitigation plan that is in compliance with the "Stream Mitigation Guidelines for the State of Tennessee" to address the resource impacts associated with this project for review and comment by regulatory and resource agencies. If the applicant fails to provide an appropriate wetland mitigation plan in compliance with the "Stream Mitigation Guidelines for the State of Tennessee", we request that the permit be denied.

Thank you for the opportunity to comment.

Sincerely,



Robert M. Todd
Fish and Wildlife Environmentalist

cc: Bobby Brown, Region III Habitat Biologist
John Mayer, Region III Manager
Lee Barclay, U.S. Fish and Wildlife Service
Darryl Williams, Environmental Protection Agency

Appendix C
Water Quality Certification

#2008-01425
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TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
7th FLOOR L & C ANNEX
NASHVILLE, TENNESSEE 37243-1534

Certified Mail Receipt 7007 1490 0001 3609 4025

December 31, 2008

Mr. Charles Kerr, Trustee
South Harriman Baptist Church
626 Ruritan Road
Harriman, TN 37748

Subject: **§401 Water Quality Certification; State of Tennessee
Application NRS No. 08.067 – South Harriman Baptist Church;
Unnamed tributary To Caney Creek; Harriman, Roane County.**

Dear Mr. Kerr:

We have reviewed your application for the proposed impacts to 450 linear feet of an unnamed tributary to Caney Creek. Pursuant to §401 of the Federal Clean Water Act (33 U.S.C. 1341), the state of Tennessee is required to certify whether the activity described below will violate applicable water quality standards.

Subject to conformance with accepted plans, specifications and other information submitted in support of the referenced application, the state of Tennessee hereby issues certification for the proposed activity (enclosed). Failure to comply with the terms of this permit or other violations of the *Tennessee Water Control Act of 1977* is subject to penalty in accordance with T.C.A. § 69-3-115.

It is the responsibility of the permittee to ensure that all contractors involved with this project have read and understood the permit conditions before the project begins. If you need any additional information of clarification, please contact Mike Lee at 615-532-0712 or by e-mail at Mike.Lee@state.tn.us.

Sincerely,

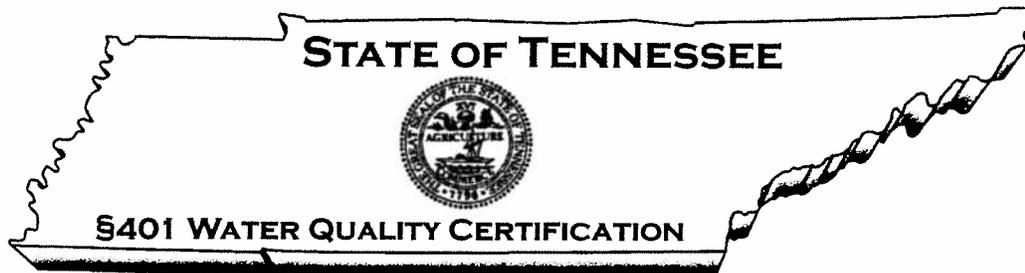
Mike Lee
Natural Resources Section

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**§401 CERTIFICATION
SOUTH HARRIMAN BAPTIST CHURCH
NRS #08.067
PAGE 2.**

Cc: Knoxville Environmental Field Office
Forest McDaniel, U.S. Army Corps of Engineers (COE), Nashville Dist.
Tom Welborn, U.S. Environmental Protection Agency, Atlanta, GA
Lee Barclay, U.S. Fish and Wildlife Service, Cookeville, TN
Rob Todd, Tenn. Wildlife Resources Agency, Nashville, TN
James Burnham, Lackey and Associates, Inc., P.O. Box 458, Oliver
Springs, TN 37840
File Copy.

**§401 CERTIFICATION
SOUTH HARRIMAN BAPTIST CHURCH
NRS #08.067
PAGE 3.**



NRS 08.067

Pursuant to §401 of the Federal Clean Water Act (33 U.S.C. 1341), the state of Tennessee is required to certify whether the activity described below will violate applicable water quality standards. Accordingly, the Division of Water Pollution Control requires reasonable assurance that the activity will not violate provisions of *The Tennessee Water Quality Control Act of 1977* (T.C.A. § 69-3-101 et seq.) or of §§ 301, 302, 303, 306 or 306 of *The Clean Water Act*.

Subject to conformance with accepted plans, specifications and other information submitted in support of application NRS 08.067, the state of Tennessee hereby certifies the activity described under authorized work below pursuant to 33 U.S.C. 1341. This shall serve as authorization pursuant to §T.C.A. 69-3-101 et seq.

PERMITTEE: Charles Kerr, Trustee
South Harriman Baptist Church
626 Ruritan Road
Harriman, TN 37748

AUTHORIZED WORK: The proposed expansion of the church will involve the relocation of approximately 150 linear feet and the encapsulation of 300 feet of an unnamed tributary to Caney Creek. As part of the encapsulation two access roads will be constructed.

The applicant shall provide onsite compensatory mitigation for the loss of stream due to culverting (minus the road crossings). In stream habitat and channel improvements and a riparian buffer will be established on the downstream 310 linear feet of the property. In addition, approximately 50 feet of a storm water conveyance pipe that is discharging silt into the stream will be removed and replaced with grass and native stone. Bioretention areas will be constructed in three locations around the parking lot.

**§401 CERTIFICATION
SOUTH HARRIMAN BAPTIST CHURCH
NRS #08.067
PAGE 4.**

The applicant shall monitor the stream relocation and submit annual reports to this office for at least five years.

LOCATION: Project is located south of Highway 27 and just north of Caney Creek on Ruritan Road in South Harriman, Roane County.

EFFECTIVE DATE: December 31, 2008

EXPIRATION DATE: December 30, 2013

SPECIAL CONDITIONS:

1. The work shall be accomplished in conformance with the accepted plans, specifications, data and other information submitted in support of the above application and the limitations, requirements and conditions set forth herein.
2. No impacts to any waters of the state by this project, other than those specifically addressed in the plans and this permit, are allowed. All other streams, springs and wetlands shall be fully protected prior, during and after construction until the area is stabilized. Any questions, problems or concerns that arise regarding any stream, spring or wetland either before or during construction, shall be addressed to the Division of Water Pollution Control, 865-594-6035. Wetlands outside of the proposed area of impact shall not be used as storage or staging areas for equipment.
3. All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3.-03 of the Rules of The Tennessee Department of Environment and Conservation. This includes but is not limited to the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include fish and aquatic life, livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply, and navigation.
4. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of waters of the state, including groundwater.

**§401 CERTIFICATION
SOUTH HARRIMAN BAPTIST CHURCH
NRS #08.067
PAGE 5.**

5. Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat is prohibited.
6. This permit does not authorize adverse impacts to cultural, historical or archeological features or sites.
7. Compensatory stream mitigation for the encapsulation of approximately 300 linear feet of the unnamed tributary to Caney Creek shall occur onsite within the downstream section of the unnamed tributary. Trees shall be planted on 15-foot centers in alternating rows in an approximate 30-foot buffer along both banks. Only native tree species (locally occurring) shall be planted. Trees should be at least 0.5" dbh. No one species shall comprise more than 25% of the total. Planting shall occur from late November until the end of March.
8. Additional stream mitigation shall occur with the removal of approximately 50 feet of a storm water conveyance pipe that is discharging silt into the stream and replaced with grass and native stone. Bioretention areas will be constructed in three locations around the parking lot.
9. The relocation of approximately 150 feet of the unnamed tributary shall be conducted in the dry. Vegetated plugs (existing ground) shall be left intact at the up-and downstream segments of the relocated channel. After completion of the new channel the downstream plug shall be removed first and then the upstream. Flow shall be conveyed through the new channel for approximately 72 hours prior to backfill of the old channel.
10. The placement of 300 feet in a culvert shall occur in the dry. The culvert shall be embedded in the stream substrate to allow for accumulation of natural deposits. Any and all culvert seals used to connect sections shall be sealed such that flow will not be lost or diminished through the culvert.
10. The permittee shall provide this office with a post construction verification report. Such report shall document in a narrative and photographic form that the stream mitigation plan and relocation has been completed according to plans. This shall be submitted immediately following completion.
11. The stream mitigation shall be monitored with annual reports submitted to this office. The report shall document tree survival, both herbaceous and woody species bank coverage, bank stabilization and in-stream habitat and substrate stability. Failure to submit the monitoring reports shall result in a Notice of Violation (NOV) to the permittee and possible civil penalties.

**§401 CERTIFICATION
SOUTH HARRIMAN BAPTIST CHURCH
NRS #08.067
PAGE 6.**

12. The first monitoring report shall be submitted by October 31, 2009 and each subsequent year until the division notifies the permittee that reporting can be terminated. (If no work has been completed by the due date of the first monitoring report then a no work report shall be submitted.)

13. Signs, Carsonite or similar, shall be placed around the stream mitigation area that clearly indicate that they are Protected and that no disturbance is permitted.

14. It is the responsibility of the permittee to convey all the terms and conditions of this certification to all contractors.

15. The relocated channel and riparian area around the stream shall be placed under the division's Land Use Restrictions. Such document shall be recorded and submitted to this office within forty-five (45) days after receipt of this permit.

16. The permittee shall retain the services of a qualified individual or firm to oversee the implementation of the stream mitigation and restoration plan, conduct annual monitoring and submit annual reports.

17. If ownership of the stream mitigation area changes prior to completion of mitigation activities and monitoring requirements the permittee shall request that the permit be transferred to the new owner and the new owner shall inform this office by copy of letter the acceptance of the permit and all its conditions.

A copy of this permit, approved plans and any other document pertinent to the activities authorized by this permit shall be maintained on site at all times during periods of construction activity.

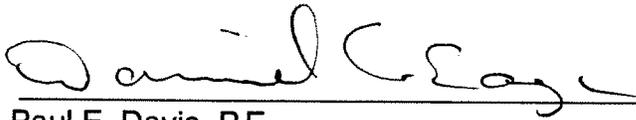
This does not preclude requirements of other federal, state or local laws. In particular, work shall not commence until the applicant has received the federal §404 permit from the U. S. Army Corps of Engineers, a §26a permit from the Tennessee Valley Authority or authorization under a Tennessee NPDES Storm Water Construction Permit where necessary. This permit also serves as a Tennessee Aquatic Resource Alteration Permit pursuant to the *Tennessee Water Quality Control Act of 1977* (T.C.A. § 69-3-101 et seq.).

The state of Tennessee may modify or revoke this permit or seek modification or revocation should the state determine that the activity results in more than an insignificant violation of applicable water quality standards or violation of the act.

Failure to comply with permit terms may result in penalty in accordance with T.C.A. §69-3-115.

**§401 CERTIFICATION
SOUTH HARRIMAN BAPTIST CHURCH
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An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within 30 days after receipt of the permit. In such petition, each contention should be stated in numbered paragraphs that describe how the proposed activity would be lawful and the action of the state is inappropriate. The petition must be prepared on 8½" x 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with Tennessee Code Annotated Section 69-3-110 and 4-5-301 et seq. Questions concerning this certification should be addressed to Mike Lee at 615-532-0712.



 Paul E. Davis, P.E.
Director, Division of Water Pollution Control