

## Appendix E

### Comments Received on the Draft EA and Agency Responses

Appendix E  
Comments Received on the Draft EA and Agency Responses

TVA and USACE (the agencies) received 21 comment letters and electronic mail letters during the comment period on the EA in May and June 2005. Comments submitted during the comment period, and agency responses, follow. Due to the volume of these comments and their frequent similarity, the agencies have summarized all of them. In appropriate instances, the EA was changed because of the comments. The agencies have identified, when possible, those individuals and organizations that made similar comments after each summarized response. Because the comments were summarized, the precise wording of the comments was not always used. Also, in some cases, the identified commenters did not individually raise every point or element within a summarized comment. However, the agencies tried to retain all important differences among similar comments. Consequently, a number of summarized comments may appear repetitious. All original comments are attached to the EA following this summary.

1. Option D seems to protect the streams and wetlands better than most other options and still provide some real benefit for traffic concerns (Steve Brooks).

**Response:** This comment has been reviewed and noted.

2. Whatever is selected, the erosion controls must be as stringent as possible. Even with perfect plans, the execution of those plans often leaves much to be desired. TDOT is infamous for allowing road projects to erode and pollute streams for months and sometimes even years at a time. No matter what is selected, if it is near a stream, then the automatic assumption should be that the stream WILL be damaged. There is no way around it (Steve Brooks).

**Response:** Comments noted. TDOT will be required to comply with construction stormwater regulations. The certification process under Section 401 and the permitting process under Section 404 of the Clean Water Act provide assurance that water quality will not be degraded, and also provide enforcement mechanisms (civil and criminal penalties) in the event that the permit holder does not comply with permit conditions.

3. The historic house that is in the center of this controversy sat 30 yards to the right of our driveway. It was in a state of disrepair. From 1988 to the day it was bulldozed no maintenance was ever done. It had no paint, the porch was falling in and the out buildings and outhouse were collapsing. There would have been no reconstruction possible (Bonnie and Dale Carter).

**Response:** Comment noted. The tenant house was deemed eligible for the National Register of Historic Places as part of the Johnson farm. Impacts to the Johnson farm were considered in finalizing the Memorandum of Agreement under Section 106 of the National Historic Preservation Act.

4. We support Alternative D because it would remove heavy traffic from North Church Street, would make exits from the high school and middle school safer, and would allow the town to make a face lift and encourage tourism. Truckers would no longer use jake brakes which rattle/shake houses at night (Bonnie and Dale Carter, Evelyn McQueen Cook, Loyd W. McEwen, James D. Mullins, Peggy Park, Dick Grayson-Johnson County Mayor, Minnie Miller-Johnson County Schools)

**Response:** These comments have been reviewed and noted.

5. An additional rare plant (marsh marigold) was found in the wetlands in the spring of 2004. Why is this state endangered, globally secure northern species not addressed in this EA? (James T. Donaldson)

**Response:** Information on the marsh marigold has been added to the EA.

6. TDOT surveys were incomplete. More rare species are almost certainly located in these wetlands, and it is simply a bad idea to proceed with this project without having complete biological surveys performed for all prominent life forms (mammals, birds, amphibians, reptiles, plants, etc.) (James T. Donaldson).

**Response:** The existing surveys have characterized the wetlands and determined their uniqueness. They are by no means pristine, having been affected by cattle, channelization, and beaver activity. Further, the permitting agencies have also visited the site and believe that the surveys that have been undertaken are adequate to determine the environmental importance of the site.

7. Thank you for considering the entire roadway in the Area of Potential Effect (APE) (James T. Donaldson, Joe McCaleb, Wildlaw-Rachel Doughty).

**Response:** This comment has been reviewed and noted.

8. Thank you for instructing TDOT to consider a new alternate route, Route I, in addition to the other routes considered. Can this EA be finalized before TDOT does an analysis of this alternate route? (James T. Donaldson).

**Response:** The agencies have analyzed the impacts of Alternative I and have completed a field visit to the corridor. Most of the Alternative I corridor is pasture and not likely to harbor sensitive habitats. A detailed site walk was conducted in one area. More detailed analysis of Alternate I is not deemed necessary.

9. The last paragraph on page 6 states that the road alignment has been designed to minimize stream and wetland impacts on Mr. Sutherland's property. This statement has me confused, because I would not be opposed to the road's potential impacts to the wetlands if it had actually been designed to minimize stream and wetland impacts on Mr. Sutherland's property. Moving the route away from the streams is the only way to truly minimize impacts to the wetlands (James T. Donaldson).

**Response:** As a result of the review process, the route has been re-designed to avoid impacts to the Sutherland wetland. Minimization measures include a retaining wall and use of a rock buttress in spring seeps rather than standard fill. The impacts of the project would be greater without these minimization measures.

10. Using the 2:1 mitigation ratio overlooks the intrinsic rarity of all mountain wetland ecosystems, not just the Appalachian Artesian Calcareous Seepage Fen. The mitigation ratio needs to be adjusted to reflect the rarity of the wetlands that will be impacted (James T. Donaldson, Rachel S. Doughty-Wildlaw, Cathy Riddle-League of Women Voters of Watauga).

**Response:** As mentioned in the EA, the Sutherland wetland has been avoided through a project redesign following release of the draft EA. For the remaining wetland impacts, a 2:1 ratio is viewed as appropriate. The Shady Valley wetland mitigation site is comparable to the wetlands being impacted. Replacement wetlands would be of the same type and in the same ecoregion.

11. Who will be responsible for transplanting the Godfrey's sandwort? It is a short list of individuals that I feel are qualified for this task (James T. Donaldson).

**Response:** Following site visits, TVA no longer believes that transplantation is necessary. The population likely to be impacted in the Wills Branch wetlands is a small percentage of the total population in the Wills Branch-Laurel Creek wetlands area. Due to the low-spreading nature of the plant and inability to identify individuals, the prospects for transplantation success are not favorable.

12. Page 11, 4.1 Introduction. The ecological description of the area is much too brief (James T. Donaldson).

**Response:** Comments noted. The ecological description was written to focus on the issues that were emphasized by commenters. Additional information has been added to the ecological description based on this and other comments.

13. Page 12, substrate. While it may be true that no net channel loss would occur, it does not address the quality of the stream channel that would be created. Stream creation or restoration projects do not result in comprehensive replacement of all aquatic resource functions. Tree plantings would only replace one of several stream/riparian habitat parameters (James T. Donaldson).

**Response:** The agencies generally agree. This is why the Tennessee stream mitigation program requires ratios depending on the nature of the stream impact (<http://www.tnstreammitigationprogram.com>). The stream mitigation plans have been revised to include payment into the Tennessee in-lieu fee program, which results in comprehensive replacement of aquatic functions.

14. Page 12, "substrate impacts are expected to be relatively minor because of the degraded nature of the streams and the mitigation provided." This overlooks the natural integrity remaining along the streams and their restoration potential, while at the same time presuming that the proposed mitigation measures are sufficient and effective, which they are not! (James T. Donaldson)

**Response:** The resource agencies have determined that mitigation measures are sufficient and effective for this type of stream impact. They are consistent with Tennessee Stream Mitigation Guidelines (<http://www.tnstreammitigationprogram.com>).

15. Page 12, suspended particulates, turbidity. TDEC halted the construction after learning that TDOT did not have permits for the wetlands construction. (James T. Donaldson).

**Response:** No order was issued by TDEC. TDOT halted construction on its own upon realizing that NHPA and NEPA reviews had to be completed on the corridor by the permitting agencies prior to further construction. There is no information suggesting that TDOT initiated the construction purposefully to avoid review by the involved federal agencies.

16. Page 13, water quality. An aggressive campaign by NRCS could reduce or maybe reverse the trend that has resulted in the 2004 state list of impaired streams including Laurel Branch. Any road construction along these streams would certainly affect their overall quality and contribute to their listing as impaired streams (James T. Donaldson).

**Response:** Water quality permits required for road construction include NPDES construction stormwater permits and Section 401 or ARAP stream crossing permits. TDEC does not issue a certification under Section 401 if water quality would be degraded and if the project would not comply with water quality requirements. Also, best management practices are included in the 401 certification documents. TDOT has a Quality Assurance/Quality Control independent erosion and sediment control inspection for all construction projects. In addition, inspections occur by TDEC and USACE.

17. Page 14. baseflow and water supply. I do not believe that spring flow would still emerge from the hillside in the same quantities and at the same location after being covered with a rock buttress. Dumping tons of rock on a spring will alter its flow to at least some small degree if not a larger noticeable degree. Has TDOT determined/documented the normal rate of water flow from these springs? I request PROOF through an independent assessment, not TDOT expert opinion, that a rock buttress won't affect the baseflow and water supply, and that the baseline water flow be documented prior to rock buttress construction for comparison with the baseflow after rock buttress construction. (James T. Donaldson).

**Response:** The area proposed to be affected by the rock buttress is a seepy area and not a discrete water source. It would be hard to pipe this area. French drains have a long history of functioning as designed. The rock buttress would be carefully placed in order that water flow would not be obstructed. The spring seeps flow into Laurel Creek downstream of the Sutherland wetlands; therefore, the construction activity and rock buttress would not affect the wetlands.

18. TDOT has clearly not made a real effort to avoid and minimize impacts to the Laurel Creek wetland (or Wills Branch wetlands) or they would have never placed their preferred route where they did, nor would they have failed to consider suitable alternatives (James T. Donaldson).

**Response:** Comments noted. TDOT has avoided the Sutherland wetland with an expensive retaining wall and provided minimization to spring seeps in the form of a rock buttress.

19. The other wetlands along Wills Branch are still globally-rare wetlands and should not be so readily dismissed. They best fit Southern Appalachian Herb Bog. Less than 200 acres of this wetland type remain in the world. Filling 1.38 acres would permanently affect 0.69% of the remaining acres of this community. Cumulative effects need to be considered (James T. Donaldson).

**Response:** The agencies have determined that filling less than 1 percent of this wetland type is not significant. Importantly, replacement ratios will take place in ecologically similar wetlands in Shady Valley.

20. There is a very good chance that the wetlands along Wills Branch and Laurel Creek would represent new community types were they to receive adequate formal biological analysis. Thus, they probably represent a wetland type that has much less than 200 acres remaining. In any event, they are properly classified as a G1 community (James T. Donaldson).

**Response:** The criteria for splitting and lumping of community classifications are still under discussion in the scientific community. The agencies prefer to consider impacts based on ecological similarity. As explained in the EA, we are aware of the uniqueness of the wetland communities in the Mountain City area and have included measures to avoid and minimize impacts to them.

21. Rather than native perennial rye grass and mulching, it would be much better to use a native plant that is already present and abundant in the area, rather than introducing another plant component of dubious seed source origin to these rare wetlands that are already being stressed by a number of introduced and non-native species. Further, the mulch might be contaminated and could introduce unwanted seeds, pathogens, or pollutants. It would be much better to use geotextile fabrics rather than mulch. (James T. Donaldson).

**Response:** The decision on whether to introduce geotextile fabrics will be made by an erosion control professional based on slope. TDOT also uses outside third party reviews to make recommendations on erosion and sediment control. With regard to introduction of seeds, the highway construction would take place in an agricultural landscape. It is unlikely that TDOT would introduce seeds that have not already been introduced to the area.

22. Considering the consistent, repeated failure of TDOT to recognize rare communities and rare species, has anyone who knows the local mountain plants and ecosystems looked at the Drystone Branch corridor or the entire circa 4.5-mile long road route? (James T. Donaldson).

**Response:** TVA staff conducted several field tours of the pastures and stream courses along Alternative I, and conducted a walking tour of a forested area. Rare species are primarily found in the wetlands in the Mountain City lowland, and wetlands in pastures are easily visible in this area due to vegetation differences. No wetland vegetation was observed along the Alternative I route.

23. Page 15, 1<sup>st</sup> paragraph, it is misleading to imply that smaller streams are less significant. Small streams make larger streams and all are significant! (James T. Donaldson).

**Response:** The agencies did not mean to imply that small streams are not important. It would be impossible to route a roadway and avoid all stream impacts. The purpose was to point out that impacts to larger streams have been minimized or avoided.

24. Page 15, 2<sup>nd</sup> paragraph. While the Iron Mountain range is unspoiled and naturally wild, it contains dozens of tree species, not just oaks, and hundreds of other herbaceous plants besides grasses. It would be fairer to say something like: "The Iron Mountain Range is an unspoiled and naturally wild area containing hundreds of different plant and animal species and dozens of different natural communities including old-growth forests." (James T. Donaldson).

**Response:** The EA has been changed to reflect this comment.

25. Page 15, 2<sup>nd</sup> paragraph, wildlife habitat. TNC does not have a formal, legal interest in the wetland where Shingletown Branch joins Laurel Creek ca. 1.8 miles downstream of the Sutherland Wetland. I suspect the site will be described as a new wetland community type once it is formally evaluated. It is indeed similar to Sutherland's Laurel Creek wetland but lacks the obvious artesian hydrology. (James T. Donaldson).

**Response:** Comments noted. See response to comment 20.

26. While no bog turtles were found, I think you have made a big leap to the conclusion that "the habitat was not found to be of good quality to sustain the species." I feel that it is good habitat. It is a possible experimental reintroduction site. (James T. Donaldson).

**Response:** The report from Knoxville Zoo expert Bern Tryon on June 17, 2004 indicated that the habitat was deficient because beavers have created two ponds within what was probably potential bog turtle habitat. The area has also been overused by cattle.

27. Let me point out that the 5 rare plants listed on the wetlands permit were found with minimal time and effort by Rick Foster and myself. Additionally, I found the state-endangered marsh marigold (*Caltha palustris*) during spring 2004. Additional rare species likely to be found include *Dryopteris cristata*, *Dryopteris carthusiana*, *Carex ruthii*, *Galium palustre*, *Glyceria laxa*, *Hypericum ellipticum*, *Veronica americana*,

*Eriophorum virginicum*, *Triadenum fraseri*, *Sanguisorba canadensis*, Southern bog lemming, and star-nosed mole. (James T. Donaldson).

**Response:** See response to question 20.

28. While 5 of the rare plants are globally secure, they cannot be readily considered secure in the state because they are restricted to the 3 northeast-most counties of Carter, Johnson and Sullivan (James T. Donaldson).

**Response:** Comments noted. These plants are found elsewhere in adjoining states, and are of less concern because of that.

29. Cumulative impacts must be addressed for the wetlands and rare species impacted by the SR 91 project along Stony Creek at Hunter Bog: Godfrey's sandwort, skunk cabbage, marsh marigold, and marsh bellflower. The other 3 of Tennessee Godfrey's sandwort colonies have been impacted by road projects (James T. Donaldson).

**Response:** These potential cumulative impacts are recognized in the EA. Hunter Bog has changed over time and does not provide good habitat for rare species currently. This is partly because of landowner vegetation management activity and not because of the road project.

30. Why aren't other rare species being considered for transplanting out of the road route? (James T. Donaldson).

**Response:** The other species are not globally rare and the agencies have determined that the viability of the species are not sufficiently at risk to warrant transplantation.

31. Page 16, 2<sup>nd</sup> full paragraph, next to last sentence, refers to only a few individuals being affected and therefore the impacts are insignificant. I completely disagree. Any loss of these species globally rare habitats will necessarily threaten and limit the amount of available habitat present for them in the future. (James T. Donaldson).

**Response:** The agencies are protecting the globally rare species and its wetland habitat. The agencies do not agree that "any" loss of the other species habitat is significant.

32. How do we know these species are not also found within the Alternative I corridor? (James T. Donaldson).

**Response:** Habitats where these species are found are not present. See response to comment 22.

33. Why wasn't Canada barberry transplanted out of the route? (James T. Donaldson).

**Response:** Other populations are present in the area and it is not a globally rare species.

34. Page 17, navigation. Canoeing and kayaking do take place along the lower part of Laurel Creek in the vicinity of Camp Ahistadi and downstream (James T. Donaldson).

**Response:** The EA has been changed to recognize these activities.

35. Page 19. Under consideration of private property, it is implied that environmental and historic impacts were not a primary consideration during the planning phase, but instead project cost and cost of construction were the driving force in this project. It should be the other way around (James T. Donaldson).

**Response:** The agencies did not mean to imply that environmental and historic impacts were not a primary consideration. Historic properties and biological resources were identified and delineated by TDOT during project planning.

36. Pages 19-20. I find no evidence that TDOT has considered perpendicular crossings for the Wills Branch part of the Alternative D route. Instead, TDOT has opted to destroy the floodplain, wetlands, and rechannelize the stream rather than minimize impacts (James T. Donaldson).

**Response:** In the area of Wills Branch, perpendicular crossings are not feasible because of the terrain. The route was designed to minimize distance and avoid big cuts and fills that can have substantial impacts.

37. Page 20, it is stated that terrestrial and aquatic resources are in good condition in the project area. This statement seems at odds with other statements in the draft EA that dismiss the quality of the streams and wetlands in the Mountain City lowlands. Can you reconcile this? (James T. Donaldson).

**Response:** The EA has been modified to clarify that stream degradation by agricultural uses such as cows in pastures was occurring. However, other resources are minimally impacted by human activities.

38. The rare plants have yet to be demonstrated as having secure, protected, self-sustaining populations elsewhere in the state. This should be kept in mind, along with the fact that the Tennessee populations may differ significantly at the genetic level from the populations found further north. All populations and colonies of these rare species should be considered necessary for the long term survival of their metapopulations in Tennessee (James T. Donaldson).

**Response:** The agencies generally agree, and have attempted to balance the community's desire for a project with the protection of sensitive resources. The TDOT decision to modify their request and avoid the Sutherland wetland was encouraged by regulatory agencies, and is evidence of the balancing of these needs.

39. I am appalled at the blatant disregard for the historic Alfred Johnson Farm, not only in terms of historic structures and features and their destruction, but also for the extreme amount of erosion and siltation that took place. (James T. Donaldson).

**Response:** It is unfortunate that a contributing house to the National Register property was destroyed. The agencies believe that it was a lack of oversight over the contractor's work that resulted in the destruction, and not an anticipatory demolition. Similarly, the erosion and siltation problems seemed to be related to the sudden nature of the work stoppage and were corrected once they were discovered by TDOT. As to the structure that was affected, information on the characteristics that made it eligible for the National Register had been previously documented and its historic value preserved because of this.

40. I would like to know where the nearby skunk cabbage and crested shield-fern records are in the TDEC database. (James T. Donaldson).

**Response:** These records can be obtained from TDEC Natural Heritage, which provides such information to qualified professionals.

41. The purpose and need for the project is inadequately discussed. If traffic volumes are increasing along the 91 corridor, what traffic studies or counts have been done? How many daily vehicle miles (DVM) have been calculated and over what time, using what models? (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** Recent traffic volume data is not available. However, observations from field visits have indicated some congestion in the north Mountain City area. Highway projects may be undertaken for a variety of reasons, including congestion mitigation. TDOT has

informed the agencies that the project is intended to improve traffic flow and nothing suggests that this is untrue.

42. The water quality certification of August 2003 is faulty and should be withdrawn. It did not include a description of the globally significant Sutherland swamp (wetland) (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** The initial certification did not include impacts to the Sutherland wetland. After release of the draft EA, TDOT redesigned the project to avoid impacts to the Sutherland wetland. On January 25, 2006, TDEC issued a letter confirming that the additional impact to a stream and springs near the Sutherland wetland qualified for a General Permit. Because there is no impact to the Sutherland wetland, a revised certification is not necessary. Regardless, under Section 511 of the Clean Water Act, federal agencies are precluded from reviewing the adequacy of Section 401 certifications.

43. Thank you for extending the scope of the project analysis to the entire length of the roadway project, and not segmenting (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** This comment has been reviewed and noted.

44. Alternative I is recommended because

a. the cost is only 1 million more dollars than Alternative D, an insignificant sum for highway construction (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** The agencies are being deferential to the applicant's preference in selecting Alternative D as the preferred alternative. In preferring Alternative D, TDOT has been guided by the strong preference shown by local officials for Alternative D over Alternative I, and by the community expectations that have developed over 15 years. From an environmental standpoint, Alternative I does not appear better than Alternative D and this provides another reason to defer to TDOT's preference.

b. Alternative I will have fewer impacts or impacts of lesser intensity than Alternative D (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** After consideration of the impact analyses and comparison of Alternatives D and I, it appears that there are benefits and disadvantages to each alternative. Both alternatives have similar impacts to the two historic districts. Alternative D would result in greater impacts to the aquatic environment than alternative I. However, Alternative I has other substantial adverse environmental effects that would outweigh the overall impact to the aquatic environment. Alternative I would result in the displacement of 14 structures, slightly greater construction costs (\$1 million or 5 percent greater), more noise impacts to existing houses because a portion follows the existing SR 91 corridor, and greater disturbance to wildlife habitat (0.4 miles longer alignment). In addition, Alternative I would affect the NRHP-eligible William Marsh house. The local community strongly prefers Alternative D. TDOT also prefers Alternative D because from an engineering perspective this alternative satisfies the project purpose and need better than Alternative I through the movement of traffic off of the old highway corridor. The aquatic environment impacts resulting from Alternative D can be adequately minimized and mitigated. In light of these considerations, the agencies have selected Alternative D as the preferred alternative.

c. Roan Creek is on Tennessee's 303(d) list Laurel Creek is classified as a natural reproducing trout stream. Both of these streams need to be guarded against erosion and sedimentation which is so common in highway construction.

d. Alternative I routes construction away from these two sensitive streams (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response** (c and d): Based on the measures outlined in the Section 401 certification and NPDES stormwater permits, streams would be protected from erosion and sedimentation under Alternative D. Further, special conditions have also been added to the Section 404 permit to address erosion and sedimentation.

e. Alternative I shifts alignment away from the valley floor and protects the two historic districts. These are significant because they are examples of late 19<sup>th</sup> and early 20<sup>th</sup> century Appalachia farming practices. By shifting the alignment to the ridgeline, impacts to these two historic districts are reduced, and the status of either district is not threatened (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** Although Alternative I would intersect the Johnson Hollow Historic District and the Wills Historic District less prominently than Alternative D, it would continue to take land from within the proposed National Register boundaries. In addition, Alternative I would take a contributing building from within the Wills Historic District and result in adverse audible and visual impacts to the National Register eligible William Marsh House. The result of choosing Alternative I would be to place additional impacts on other National Register eligible properties including taking a building from the Wills Historic District which had previously been spared. Alternative I shifts impacts away from the Alfred Johnson Farm to the detriment of other historic properties. Although Alternative D would intersect both historic districts, some of the farmsteads throughout the valley would most likely continue to be individually eligible for listing in the NRHP. In addition, it is not expected that Alternative D would make the individually listed Alfred Johnson Farm ineligible for the NRHP.

f. Noise impacts would be less for both historic districts. Alternative D and H would put traffic through the valley with sound reverberating off the surrounding mountains, making noise an even greater factor (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** All alternatives are in the Mountain City lowlands. Alternative I would put traffic through a different valley and would still result in noise impacts to both historic districts. Important differences in noise impacts are not expected among the alternatives. The detailed level of noise affecting each historic property would need to be confirmed through detailed design plans.

g. Alternative I will not cause the Marsh House to be removed from eligibility, nor will it cause physical damage to the Marsh House. Moreover, Alt. I will cause the displacement of fewer structures than Alternative D (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** The building of Alternative I would adversely impact the previously un-impacted William Marsh House, in addition to removing a contributing structure from the Wills Historic District. As originally drawn and presented to TDOT by the Johnson family, it would have resulted in the demolition of the Marsh House. TDOT shifted the alternative in such a way that it would avoid demolition of the Marsh House but would still result in adverse visual impacts to it. Although audible and aesthetic impacts do not cause physical damage to a National Register eligible or listed property, they are still adverse effects.

Although Alternative D would intersect Johnson Hollow Historic District and Wills Historic District, individual farmsteads throughout the valley would most likely continue to be eligible for the NRHP. In addition, the individually-listed Alfred Johnson Farm would

most likely remain eligible for the NRHP even though the primary buildings within the farm may experience some visual and audible impacts as a result of completion of Alternative D. These impacts would be mitigated through the minimum criteria contained in the landscaping plan required by the MOA, as specified in commitments for this EA.

h. Alternative D would alter water flow in several stream watersheds and impact Laurel Creek directly by impacting its tributaries; and possibly Roan Creek indirectly. Additionally, Alternative D would adversely impact the Wills Branch wetlands and would require channel relocations in Wills Branch, and would likely impact the Laurel Branch (Sutherland) wetlands (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** Generally, cross drains are anticipated which would minimize water flow changes in small watersheds. Any water flow alteration would be caused by the roadway drainage structures and roadside ditches. These flow alterations would also occur under Alternative I. The Laurel Branch wetlands are being protected with minimization techniques. The determination of the 401 certification is that water resources would not be adversely affected.

i. Alternative I would not impact any wetlands; would impact Laurel Creek only indirectly because the alignment would cross Drystone Branch approximately one stream mile south of the Drystone Branch intersection with Laurel Creek. The DEA notes on page 13 that Alternative I would impact Goose Creek tributaries; however, that seems unlikely since Goose Creek is two watersheds to the west, beyond the current highway 91, beyond its intersection with Johnson Hollow. The spring that the DEA mentions as feeding Goose Creek and would be impacted in some by Alternative I is not designated in the DEA and is unknown to this writer. Since Alternative I begins at a point some distance from Goose Creek, we can only assume the DEA is referencing the headwaters of a small tributary to Johnson Hollow Branch which then flows nearly one stream mile southwest before intersecting with Goose Branch above U.S. 421. to us, that impact seems like a stretch, at best (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** The branch in Johnson Hollow is a tributary to Goose Creek. The spring is adjacent to US 421 in Mountain City and is found along both Alternative D and I.

j. The DEA addresses visual impacts of Alternative I from Iron Mountain and from somewhere in North Carolina. While Alternative I places the realignment in higher elevation than Alternative D, given the regional haze and atmospheric pollution that dominates the East Tennessee mountains, hikers would probably welcome a clear day to actually see another ridgeline, 4 miles to the east. Of more concern to hikers or anyone exercising at high elevations is breathing clean air, not knowing whether or not a new highway is being constructed 4 miles to the east (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** Because traffic flow would be enhanced, it is unlikely that air pollution would be increased by the project. As to visual impacts, Alternative I would be more visible than Alternative D to hikers from the Iron Mountain area on its south end.

k. It is a poor argument to justify an alternative by saying "what is done is done." Some of the funds paid for Alternative D ROW could be recouped by TDOT if that ROW is returned (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** In choosing the preferred alternative, the agencies were not influenced by money spent on alternative D.

45. We agree partially with the 6<sup>th</sup> and 7<sup>th</sup> WHEREAS clauses stating that TVA has determined that all alternatives examined will have an adverse impact to the Johnson and Wills Historic Districts, but the language of the two clauses appears to treat all the impacts equally, which the DEA clearly shows is not the case. Alternative I clearly will have fewer impacts than Alternative D; avoids some impacts altogether, and minimizes others. We therefore do not agree with the language that does not make a distinction between the alternatives examined in the NEPA document (Joe W. McCaleb on behalf of Becky Johnson and Charles Johnson).

**Response:** The MOA addresses the resolution of adverse effects to just the historic properties and not to other environmental resources. It specifies the mitigation or alternatives agreed to by the consulting parties, identifies who is responsible for carrying out the specified measures, and serves as evidence that the agencies have taken historic properties into account. The accompanying EA documents the impacts of the alternatives upon various resources. Both alternatives would affect the districts as a whole. When impacts to the districts are viewed as a whole, the agencies believe that both alternatives would have an adverse effect on the historic districts.

46. We are relieved that TVA is considering the entire corridor for each alternative first, because of the interconnectedness of the system, and second, because this is the only logical way to ensure that cumulative effects are adequately addressed. Dividing the corridor into smaller sections would ignore the environmental and cultural/historic reality of the valley. (Rachel S. Doughty-Wildlaw on behalf of Public Employees for Environmental responsibility, Sierra Club and League of Women Voters).

**Response:** This comment has been reviewed and noted.

47. It is not at all clear that dumping an estimated 680 cubic m of fill material into the water source will not adversely impact more than the 0.069 acres of directly impacted wetland. Alternative I offers a solution whereby a road can be built and the Sutherland Swamp protected (Rachel S. Doughty-Wildlaw on behalf of Public Employees for Environmental responsibility, Sierra Club and League of Women Voters).

**Response:** The project has been redesigned to avoid impacts to the Laurel Creek wetlands. All fill would be on the slope above the wetlands. The water source does not flow into the wetlands but confluences with Laurel Creek downstream of the Sutherland wetland.

48. By law, only TVA's approach affords the appropriate respect to wetland values. Because I is the better alternative at this point in the evaluation process, we urge you to adopt Alternative I (Rachel S. Doughty-Wildlaw on behalf of Public Employees for Environmental responsibility, Sierra Club and League of Women Voters, Dan Grace-State of Franklin Group Sierra Club, Cathy Riddle-League of Women Voters of Watauga, Kirstin Condict-Tennessee Department of Environment and Conservation Division of Natural Heritage, ).

**Response:** The agencies gave Alternative I serious consideration, but in deference to the considerations important to the applicant, have selected Alternative D. As previously noted in response to comments received on the DEA, Alternative D has now been modified such that impacts to the Laurel Creek wetlands would be avoided. Further, the agencies believe that the aquatic environment impacts resulting from Alternative D would be adequately mitigated.

49. My clients urge you to use your statutory authority to deny a permit for Alternative D which would harm the environment, or sensitive resources (Rachel S. Doughty-Wildlaw

on behalf of Public Employees for Environmental responsibility, Sierra Club and League of Women Voters).

**Response:** Comment noted. TVA believes, based on the assessment in the EA, that only minimal adverse effects would result on the environment or sensitive resources.

50. Numerous rare plant species occur within a two-mile radius. Seven of the 11 rare species documented from the general project area carry a state rank of S1, meaning that these species are extremely rare and critically imperiled in the state, with five or fewer known occurrences. Of these, *Arenaria godfreyi* also carries a global rank of G1, meaning that this species is critically imperiled globally. This rare, regional endemic has been extirpated from much of its former range, primarily as a result of habitat destruction (Kirstin Condict-Tennessee Department of Environment and Conservation Division of Natural Heritage).

**Response:** Comments noted. We do not believe most of these species are in the project area due to the presence of grazing animals. However, those species potentially present in the wetlands have been evaluated and the Sutherland wetland protected.

51. DNH supports the Ridgeline Alternative and requests that TDOT make every effort to avoid adverse impacts to the state listed species and globally rare plant community documented from the project area, and where this is not feasible, offer appropriate mitigation (Kirstin Condict-TDEC Division of Natural Heritage).

**Response:** This comment has been reviewed and noted.

52. In May 2002, I bought 63 acres with the express intent to build an upscale housing development. The property fronts on Johnson Hollow Road but has 10 acres in the back which would front the originally proposed road. The new Alternative I proposal would be very costly to me, and I have already removed 5 very old oak trees which made those 10 acres a lot more private and attractive. I urge you to proceed as originally planned (H.G.M. Sijthoff and Karen L. White-Sijthoff-Ridgeview LLC).

**Response:** This comment has been reviewed and noted.

53. We are Wills descendents who presently reside within the Wills Historic District, are property owners, or have current interests. We have friends and family who have had to vacate their homes and relocate in order to make room for the road. We have been hoping to be able to travel north out of Mountain City in the morning and mid-afternoon without being delayed or stopped due to the hazardous, heavy school traffic. We have been anticipating easier access to our family cemetery, which sits atop a steep hill one-quarter of a mile from the present highway 91. The north end of the bypass is planned to come within yards of the cemetery. We have found the delays in the project to be disheartening and we look forward to completion of the highway 91 bypass in accordance with the original plans (Nancy Wills Shoun, Lewis H. Wills, Jay and Reba Wills, Morris and Linda Woodring, Mike Wills, Norma Wills, and Louise Shull).

**Response:** These comments have been reviewed and noted.

54. We have no involvement with the SR 91 improvement project (Mark Tummons-TDEC Recreational Educational Services Division).

**Response:** This comment has been reviewed and noted.

55. Alternative I meets the legitimate objective of traffic mitigation from increasing I-81 overflow. It does so without additional cost (Cathy Riddle-League of Women Voters of Watauga).

**Response:** Comment noted.

56. A holocaust-type event could befall a single habitat site. Even if some of the threatened plants could have been successfully relocated, the prospects for preservation of the State's valuable natural heritage are immeasurably advanced if there is more than just one remaining, biologically well-functioning site (Cathy Riddle-League of Women Voters of Watauga).

**Response:** This is not the only habitat site for the identified sensitive plant species. Other ecologically similar wetlands and habitats are in the area, including one downstream and in Shady Valley.

57. We agree with concerns that have been raised by the U.S. Fish and Wildlife Service about the stream encapsulation for Wills Branch, to be mitigated by tree planting. We believe that such alteration and the loss of its natural riparian area would substantially, negatively affect the ability of this stream to fully maintain its wetlands and their water-filtering, habitat and other ecological functions. A row of trees does not make up for these. (Cathy Riddle-League of Women Voters of Watauga).

**Response:** The project would comply with Tennessee stream mitigation guidelines. A riparian corridor would be required in the replacement streams.

58. We have concerns about the covering of springs in the main Laurel Creek wetland. Absent actual base-rate data from rock-buttress covering of springs that are comparable in hydrogeologic aspects, we doubt the assertion of equal water flow to the wetland, following rock covering. More importantly, such seeps and springs have great importance, in addition to water provision, in the food web and life cycle and life space for many wildlife species. The prospects for aquatic invertebrates, amphibians, birds and other wetland dependent animals are likely to be harmed by conversion to clean rock piles of the natural springs that constitute and support their current habitat. (Cathy Riddle-League of Women Voters of Watauga).

**Response:** A minimization measure was added to the project that includes the building of a retaining wall, which eliminates the wetland impact and decreases the impact to the seep. The seep area that would be covered confluences with Laurel Creek downstream of the Sutherland wetland and construction would not affect the wetland.

59. Modifying the project through choice of up-slope segment would provide far better guarantee of avoiding sedimentation damage—and even potential littering damage later on—for the Sutherland wetland (Cathy Riddle-League of Women Voters of Watauga).

**Response:** The agencies only partially agree, since a longer cut slope would mean more erosion potential. The project has been redesigned through a retaining wall to avoid impacts to the Sutherland wetland.

60. The road on the Johnson property is on the upper end of the property approximately ¼ to ½ mile from the house and other buildings. It would offer very little noise or lights from cars/trucks at night on their house. (Lloyd W. McEwen).

**Response:** This comment has been reviewed and noted.

61. TDOT requests that the duration of the MOA be extended to 7 years to provide adequate time to complete the landscaping plan which will be at the end of the construction process (Doug Delaney-Tennessee Department of Transportation).

**Response:** The agencies have made this change.

62. I believe the MOA to be fair to all parties and concur with the stipulations. The Town of Mountain City wants this road to be constructed and want this delay resolved quickly so construction can begin again (Harvey Burniston-Mayor of Town of Mountain City).  
**Response:** This comment has been reviewed and noted.

63. The proposed project is in accordance with regional and local plans, programs and objectives (Susan Reid-First Tennessee Development District).  
**Response:** This comment has been reviewed and noted.

64. Johnson County is designated as attainment for the National Ambient Air Quality Standards. For this reason, Transportation Conformity does not apply to Johnson County. However, the agency is still concerned about control of fugitive dust and equipment exhaust emissions during the construction phase. Additionally, our concerns include that any structures requiring demolition are asbestos free. Also, please note that the open burning regulations have changed dramatically (Barry R. Stephens-Air Pollution Control Division TDEC).

**Response:** TDOT and its contractors must comply with all emissions control, asbestos control, and open burning regulations. Compliance with these regulations ensures that impacts to air quality are insignificant.

65. Federal law prohibits the destruction of historic property for a highway project unless there are no other alternatives. As you and I both know, there indeed are other alternatives that would fulfill the stated purpose of the project and avoid our historic farmstead. Should TVA and USACE issue federal permits for this project, their agencies would be in violation of federal law. We are demanding the highway be removed from our farm and rerouted along one of the many other alternative alignments (Becky Johnson).

**Response:** Consistent with Section 106 and its implementing regulations, the agencies have assessed impacts to historic properties under Alternatives D and I. Although Alternative I would intersect the two historic districts less prominently, it would continue to take land from within the boundaries of the historic districts. Other alternatives that would cost substantially more or have far greater impacts than Alternatives D and I were screened out after the preliminary evaluation.

66. We commend the Tennessee Valley Authority for requiring TDOT to evaluate and reconsider the other viable alternatives. We hope this is not a futile exercise, however, but that it lives up to the spirit and intent of Section 106. Retroactively going through the motions of Section 106 but in the end permitting the current alignment would be a thinly veiled, inadequate attempt to comply with federal law. We expect TVA will not aid and abet TDOT in violating federal law (Becky Johnson).

**Response:** Comment noted.

67. The construction of highway 91 across the Historic Johnson Farm will likely result in the delisting of the farm from the National Register. The entire farm, more than 100 acres, is listed on the National register, not simply the home site. According to the National Register, the historic attributes of the farm included the fence rows and spatial orientation of historic agricultural practices, which have been destroyed by TDOT grading activity. A cattle pond, constructed as part of the Farm Demonstration Program of the early 1900s, also was listed on the National Register as a contributing historic feature. It, too, was bulldozed, without permits. A 1910 tenant house was also listed as a contributing feature of the farm. Sadly, it, too was bulldozed, forever erasing this piece of history that conveyed the complete picture of an early Appalachian farm. These

destructive activities taken together will declassify much of the Johnson Historic Farm from inclusion of the National Register (Becky Johnson).

**Response:** Comment noted. The EA acknowledges that these impacts had already occurred at the time the agencies were presented with permit applications. While the farm was impacted by construction activities prior to the submission of permit applications, TVA believes that the farm would most likely remain eligible for the National Register, even though the primary buildings within the farm may experience some visual and audible impacts as a result of completion of Alternative D. These impacts would be mitigated through the minimum criteria contained in the landscaping plan required by the MOA as specified in commitments for this EA.

68. Perhaps most troubling is TDOT's reckless disregard for the spirit and intent of Section 106 once they belatedly embarked on it. In an April 2003 email from Martha Carver, TDOT historic specialist, to Angela Duncan, TDOT roadway specialist, Carver states: "We wrote the Corps and TVA 3/11/03 and asked them to define their APE and asked both agencies what they wanted us to do to comply with Section 106. Neither has responded. Both agencies should be able to take our old state reports and just put new cover letters on and get the 106 clearance...Once they get started, there are two 30-day waiting periods in our process so we aren't going to get clearance too quickly." It is evident that TDOT staff treated Section 106 as a mere bother (Becky Johnson).

**Response:** As demonstrated by the Consulting Parties meeting on June 4, 2004, release of an EA for public comment, and preparation of an MOA to resolve adverse effects, the agencies have taken a hard look at the historic impacts and independently arrived at conclusions related to this project.

69. TDOT grossly failed when presenting alternatives for this project to the public. An alternative that would have avoided the Johnson Hollow Historic District was not adequately considered, according to TDOT's 1996 documentation of effects. "The preliminary 1992 survey identified the Johnson Hollow corridor as the core of a large rural historic district. In an effort to avoid the proposed Johnson Hollow Historic District, TDOT made a preliminary evaluation of an alignment further west that ran along the floor of Jenkins Hollow, which lays parallel to Johnson Hollow, and turning eastward at Wills before merging with the existing alignment of SR 91. However, TDOT eliminated this corridor in the early planning stages because it did not meet traffic needs and due to the cost. Also, local officials did not like this alignment" (Becky Johnson).

**Response:** The agencies re-screened the Jenkins Hollow alignment and verified that it was longer, more costly, and did not meet traffic needs because it was too far to the west. This alternative would also have wetland, stream, and cave impacts, in addition to affecting the Wills Historic District. Thus, it did not appear to offer any environmental advantages over the Alternative D route.

70. TDOT documents reveal that Alternative D-the route bisecting the Alfred Johnson Historic Farm, was lobbied for heavily by local officials. Those lobbying efforts should not drive a state agency such as TDOT to dismiss their obligations under the law, and should not sway TVA to be a party to violating federal law by issuing permits for such a project (Becky Johnson).

**Response:** See response to Comment No. 68

## Draper, Harold M

---

**From:** Becky Johnson [becky@smokymountainnews.com]  
**Sent:** Wednesday, June 28, 2006 9:50 AM  
**To:** Draper, Harold M  
**Cc:** charles johnson; Joe McCaleb  
**Subject:** Highway 91 landscaping

Harold,

Thank you again for facilitating the meeting Tuesday. I appreciate the support we have received from your agency. After discussing the landscape proposals with my father, there are two aspects I would like to change.

One involves the concept of a meandering tree line at the top of the slope, with the meander oscillating between minimum and maximum tree setbacks of 5 to 15 feet from the guardrail. Upon further consideration, we realized that trees set back 15 horizontal feet from the guard rail would be at least 15 vertical feet down the slope. The rise over run appears to be 1 to 1 ratio at least, if not greater.

We would have to wait a decade or more before the tree canopy on the outer limit of the meander begins to screen traffic. So instead, we would like the meander to oscillate between a 5 and 8 foot setback from the guard rail. I realize that is not much of a meander, but would provide more adequate mitigation from the impacts of the road on the historic property. Also under this item, can we stipulate the distance the guardrail will be from the white line? I am not sure what state policy is, but I would like the guardrail to be as close to the white line as state policy allows.

The second change we would like to make involves the spacing for trees. We discussed a mixture of 30 to 35 foot understory trees and 60 to 70 foot tall trees. The spacing called for a maximum of 20 feet, which makes sense for the larger trees. But for the smaller understory trees, a maximum spacing of 15 feet would be more suitable. Can we specify a different maximum spacing for the understory trees in the document?

Feel free to forward to the landscape architects in case they have questions/concerns about the implementation of these specifications.

Thank you again for assisting us in in securing an adequate landscape plan.

Becky Johnson

**Draper, Harold M**

---

**From:** Joe McCaleb [jwmccaleb@bellsouth.net]  
**Sent:** Wednesday, June 21, 2006 11:17 PM  
**To:** Draper, Harold M  
**Cc:** Becky Johnson; Charles Johnson  
**Subject:** State Route 91 Re-alignment in Johnson County

Harold,

I copied you an email I have just sent Doug Delaney, TDOT, confirming a meeting with TDOT and TVA on Tuesday, June 27, 2006, 10:00AM, at TDOT's Regional Office in Knoxville. It is my hope that the discussions at this forthcoming meeting will prove fruitful, and I believe they will.

The June 30 deadline TVA has proposed, however, does not allow enough time for the parties to discuss this delicate issue and formulate an acceptable plan leading to the signing of the MOA, although many of the components currently being required by TVA are favorable. I am requesting TVA extend that deadline to July 17, 2006, which gives everyone a slightly greater window of opportunity to meet a second time if necessary and agree with a plan. Please let me know by Monday, June 26, 2006 if TVA will grant that extension.

Sincerely,

**Joe W. McCaleb**  
Joe W. McCaleb and Associates  
Attorneys at Law  
315 West Main Street, Suite 112  
Hendersonville, TN 37075  
615/826-7245  
615/826-7823  
615/824-1068 (fax)  
jwmccaleb@bellsouth.net

June 9, 2006

Douglas J. Delaney, AICP  
Director  
Environmental Division  
Tennessee Department of Transportation  
Suite 900, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243-0334

Re: Johnson Historic Farm, Mountain City,  
Johnson County, Tennessee

Dear Mr. Delaney,

First, I will address the beginning statements in your May 3, 2006 letter to Harold Draper, TVA. When this issue first arose, Ms. Johnson and her father, Charles Johnson, were mainly concerned with trying to convince your agency and TVA to remove the route off their farm and use one of the other several alternative routes under discussion and known to be available. It is for that obvious reason, they chose not to discuss a landscaping plan that would place the highway across their farm. However, when TVA held the public meeting in Mountain City in June 2004, I was present. I accompanied the party out to the site of the proposed route. No one from TDOT nor the SHPO chose to walk the site and the only persons there were representatives of TVA, Ms. Johnson, Charles Johnson and myself. Contrary to information relayed to you erroneously, the proposed landscaping was discussed on site, it was objected too strenuously and reasons were stated. I followed up that meeting with a letter to TVA reiterating my client's objection to the route AND to the proposed landscaping plan. If you wish to see a copy of my correspondence, please advise.

The email letter and attachment sent to TVA on April 1, 2006 was made in a good faith effort to offer a reasonable landscape plan and mitigation for damages already done to the farm, and that will be done to the farm, if the road is not going to be re-located.

First, the proposed landscape plan. Item 2 in our proposal states: TDOT shall have a preliminary sit-down meeting with the Johnsons, the third party landscape architect and TDOT's landscape architect to discuss the goals of the landscape plan, primarily to reduce visual and audible impact of road.

It is our belief it would be in the best interest of all parties involved to have a preliminary meeting to discuss a landscape plan. The quality of the landscape plan and its ability to both visually and audibly shield the devastating impacts of

Doug Delaney,  
Page 2

the highway on the historic farm are integral in my client's decision whether to sign the MOA. We recommend that meeting be held in either Knoxville or Johnson City, or nearby at one of the TDOT Regional Office buildings and attended by representatives of TDOT, SHPO, TVA, and Ms. Becky Johnson. Ms Johnson will employ a landscape architect and bring that person with her to the meeting. In an effort to encourage open discussion, I will not be present. I do ask, however, that you inform me whether you accept this offer to meet and discuss a landscape plan and if so, who would be attending that meeting on behalf of the various interested parties. Ms Johnson is free to meet with you and others on June 20, 2006 or any date thereafter. Subsequent meetings may be necessary if the parties can work toward a solution. Additionally, the area of concern for my clients is their historic farm, not any other portion of the route, including the Wills Historic District.

Secondly, historic mitigation. My clients are not abandoning their demand for historic mitigation for the destruction of the Johnson farm's historic qualities, the destruction of a building on the national register, the permanent loss of farm income the Johnson family relied on to support the upkeep of the historic structures and the filling of a spring-fed pond without a permit. The money paid to Mrs. Rebecca Johnson Reece, under questionable circumstance, was not paid nor accepted for causing such disruption to the historic property so as to remove it completely from the Historic Register; nor was it paid as compensation for severely impairing the operation of the farm as an income producing farm. Moreover, an offer was made at least two years ago to return those funds paid to Mrs. Rebecca Johnson Reece in return for removing the route off the Johnson Farm. TDOT has rejected that offer.

My clients are willing and offer to enter into discussion with TDOT and TVA regarding the landscape plan as outlined above and other issues as they arise. Depending on how those discussions are conducted and whether progress can be achieved will determine whether Ms. Becky Johnson will sign the MOA.

Sincerely,

s/ Joe W. McCaleb



STATE OF TENNESSEE  
ENVIRONMENTAL DIVISION  
DEPARTMENT OF TRANSPORTATION  
505 DEADERICK STREET  
SUITE 900, JAMES K. POLK BUILDING  
NASHVILLE, TENNESSEE 37243-0349  
615-741-3653

June 21, 2006

Mr. Joe W. McCaleb  
Joe W. McCaleb and Associates  
Attorneys at Law  
315 West Main Street, Suite 112  
Hendersonville, TN 37075

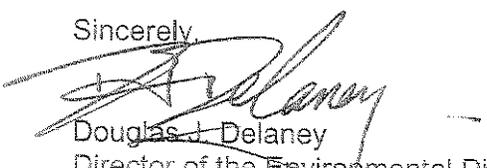
Dear Mr. McCaleb,

This letter is in response to your June 9, 2006 letter suggesting a meeting with the Johnson family to discuss the landscaping plan.

Representatives with TDOT and TVA can meet with the Johnson family on June 27, 2006 at 10:00 am (eastern) at the TDOT Region I auditorium in Knoxville. In addition, a landscape architect will be in attendance to work with us to ensure that we provide a landscaping plan that will appropriately mitigate the visual impacts to the historic district.

Please let me know as soon as possible if this date is acceptable to the Johnson family.

Sincerely,

  
Douglas J. Delaney  
Director of the Environmental Division

DD/tas

cc: John Loney, TVA  
Harold Draper, TVA  
Danny Olinger, TVA  
Ruben Hernandez, Corps of Engineers  
Joe Garrison, TN-SHPO  
Becky Johnson  
Harvey Burniston, Mayor of Mountain City  
Dick Grayson, Johnson County Mayor

061711158  
#061713892

EA-Administrative Record  
Public Comment  
TN 91-Mountain City  
2003-85

June 9, 2006

Douglas J. Delaney, AICP  
Director  
Environmental Division  
Tennessee Department of Transportation  
Suite 900, James K. Polk Building  
505 Deaderick Street  
Nashville, Tennessee 37243-0334

Re: Johnson Historic Farm, Mountain City,  
Johnson County, Tennessee

Dear Mr. Delaney,

First, I will address the beginning statements in your May 3, 2006 letter to Harold Draper, TVA. When this issue first arose, Ms. Johnson and her father, Charles Johnson, were mainly concerned with trying to convince your agency and TVA to remove the route off their farm and use one of the other several alternative routes under discussion and known to be available. It is for that obvious reason, they chose not to discuss a landscaping plan that would place the highway across their farm. However, when TVA held the public meeting in Mountain City in June 2004, I was present. I accompanied the party out to the site of the proposed route. No one from TDOT nor the SHPO chose to walk the site and the only persons there were representatives of TVA, Ms. Johnson, Charles Johnson and myself. Contrary to information relayed to you erroneously, the proposed landscaping was discussed on site, it was objected too strenuously and reasons were stated. I followed up that meeting with a letter to TVA reiterating my client's objection to the route AND to the proposed landscaping plan. If you wish to see a copy of my correspondence, please advise.

The email letter and attachment sent to TVA on April 1, 2006 was made in a good faith effort to offer a reasonable landscape plan and mitigation for damages already done to the farm, and that will be done to the farm, if the road is not going to be re-located.

First, the proposed landscape plan. Item 2 in our proposal states: TDOT shall have a preliminary sit-down meeting with the Johnsons, the third party landscape architect and TDOT's landscape architect to discuss the goals of the landscape plan, primarily to reduce visual and audible impact of road.

It is our belief it would be in the best interest of all parties involved to have a preliminary meeting to discuss a landscape plan. The quality of the landscape plan and its ability to both visually and audibly shield the devastating impacts of

Doug Delaney,  
Page 2

the highway on the historic farm are integral in my client's decision whether to sign the MOA. We recommend that meeting be held in either Knoxville or Johnson City, or nearby at one of the TDOT Regional Office buildings and attended by representatives of TDOT, SHPO, TVA, and Ms. Becky Johnson. Ms Johnson will employ a landscape architect and bring that person with her to the meeting. In an effort to encourage open discussion, I will not be present. I do ask, however, that you inform me whether you accept this offer to meet and discuss a landscape plan and if so, who would be attending that meeting on behalf of the various interested parties. Ms Johnson is free to meet with you and others on June 20, 2006 or any date thereafter. Subsequent meetings may be necessary if the parties can work toward a solution. Additionally, the area of concern for my clients is their historic farm, not any other portion of the route, including the Wills Historic District.

Secondly, historic mitigation. My clients are not abandoning their demand for historic mitigation for the destruction of the Johnson farm's historic qualities, the destruction of a building on the national register, the permanent loss of farm income the Johnson family relied on to support the upkeep of the historic structures and the filling of a spring-fed pond without a permit. The money paid to Mrs. Rebecca Johnson Reece, under questionable circumstance, was not paid nor accepted for causing such disruption to the historic property so as to remove it completely from the Historic Register; nor was it paid as compensation for severely impairing the operation of the farm as an income producing farm. Moreover, an offer was made at least two years ago to return those funds paid to Mrs. Rebecca Johnson Reece in return for removing the route off the Johnson Farm. TDOT has rejected that offer.

My clients are willing and offer to enter into discussion with TDOT and TVA regarding the landscape plan as outlined above and other issues as they arise. Depending on how those discussions are conducted and whether progress can be achieved will determine whether Ms. Becky Johnson will sign the MOA.

Sincerely,

s/ Joe W. McCaleb

061530317  
# 061532409

RECEIVED  
Environmental Policy and Planning

MAY 05 2006

Doc. Type: EA-Administrative Record  
Index Field: Agency Comment  
Project Name: TN 94 Mountain City  
Project No.: 2003-85



STATE OF TENNESSEE  
ENVIRONMENTAL DIVISION  
DEPARTMENT OF TRANSPORTATION  
505 DEADERICK STREET  
SUITE 900, JAMES K. POLK BUILDING  
NASHVILLE, TENNESSEE 37243-0349  
615-741-3653

May 3, 2006

Mr. Harold Draper  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902

Dear Mr. Draper,

This letter is in response to the landscaping plan and "historic mitigation demands" emailed to you by Joe W. McCaleb, attorney for the Johnson family, on March 31, 2006.

Mitigation Plan

In December 2003, TDOT mailed copies of a potential mitigation plan that included a preliminary landscaping plan to Becky Johnson, as a consulting party, for review and comment. She did not comment at that time. Subsequently, Ms. Johnson was given four specific opportunities after the typical review and comment period to comment on the mitigation. In March 2004, TDOT again requested her comments on the preliminary landscaping plan. In April 2004, the Tennessee Valley Authority (TVA) discussed mitigation and mailed her a draft of the Memorandum of Agreement which included the landscaping plans. In May 2004, TVA again requested her comments and extended the commenting period. And on June 4, 2004, staff from TVA, TDOT, and the State Historic Preservation Office (TN-SHPO) held a meeting with the Johnson family in Mountain City and afterward several people met on-site at the Alfred Johnson Farm. She did not comment on the mitigation in general and the landscaping plan specifically during that time.

Several aspects of the landscaping plan proposed in the March 31<sup>st</sup> email can be implemented by TDOT.

- TDOT is willing to use a landscape architect either from TVA or through a contractor to design the landscaping in both the Johnson Hollow Historic District and the Wills Historic District.

- This landscaping plan will be developed in coordination with the Tennessee State Historic Preservation Office (TN-SHPO) to ensure that the stipulations in the signed Memorandum of Agreement have been met.
- The landscape architect's plans/suggestions will be subject to the approval by TDOT's landscape architects and biologists.
- TDOT will provide all consulting parties with the preliminary landscaping plan including construction plan sheets, possibly an artist rendering of the landscaping, and plan specifications. The consulting parties will be given 30 days to review and comment. TDOT will review any comments, and as appropriate, TDOT will proceed with a landscaping design.
- TDOT will begin designing the landscaping plan within six months; allowing it to be completed prior to the opening on the road.
- TDOT's Standard Specifications for Road and Bridge Construction dated March 1, 2006 indicates that other than seedlings, all (balled & burlapped and bare root) trees shall be staked and guyed after planting. TDOT will also require the contractor to water for a minimum of one year - one inch of water a week if it does not rain.
- Typically, plants are to be guaranteed by the contractor for one year after planting during the planting season.

#### "Historic Mitigation Demands"

The mitigation "demands" proposed by the Johnson family are inappropriate given the impacts to the Johnson Hollow Historic District. The primary impact is the introduction of a roadway facility that is out-of-character with a rural historic district; therefore, the implementation of a landscaping plan that camouflages the roadway would better mitigate this impact. Repairing the house and support buildings on the Alfred Johnson Farm would not mitigate the impacts to the Johnson Hollow Historic District of which the Alfred Johnson farm is a contributing farmstead. Although the Alfred Johnson farm is individually listed in the National Register, according to 36 CFR 800, listed and eligible properties are afforded the same status under the law. Therefore, any other property owner in the historic district could make the same claim.



Although it is unfortunate that the Flora Edward Johnson tenant house was razed and two farm ponds were damaged, the Johnson family was compensated for the damages to their property. Additionally, the tenant house (at left) was documented to a level that satisfied the TN-SHPO under Section 106.

The tenant house was afforded the same level of documentation contributing outbuildings are given in both the TDOT architecture report and the National Register Nomination. This level of documentation included a written description of the house and black-and-white and color photographs. This documentation provides a context for the historic property, while preserving elements of the historic property that can not be physically preserved. Again, the documentation of the Flora Edward Johnson tenant house is typical of buildings of this nature and the TN-SHPO agreed that the level of documentation met the standards set forth under the National Historic Preservation Act of 1966. This serves as more appropriate mitigation for adverse effects to the historic farmstead than repairing the remaining structures.

Under Section 106, concurrence from all consulting parties regarding mitigation measures stipulated in the Memorandum of Agreement is the best possible outcome when historic properties are adversely impacted; however, it is our understanding that under 36 CFR 800.7(c)(3), the Memorandum of Agreement can be implemented without the signature of all concurring parties. 36 CFR 800.7(c)(3) states:

The agency official may invite all consulting parties to concur with the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

Each of the signatories, invited signatories, and concurring parties has signed the memorandum of agreement except Ms. Johnson. Some of the mitigation measures proposed by Ms. Johnson in the March 31<sup>st</sup> email can be incorporated even though Ms. Johnson's comments were made well after the typical review and comment period.

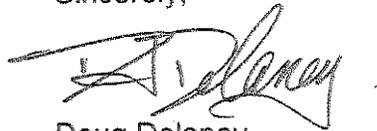
In a March 24, 2006 letter to the Mayor of Mountain City and Johnson County Mayor, Ms. Johnson incorrectly stated that Section 106 "requires historic property to be avoided if feasible alternatives are available." As you know, Section 106 is a consultative process that requires Federal agencies to take into account impacts to historic properties and provide the Advisory Council on Historic Preservation an opportunity to comment on federal undertakings. 36 CFR 800.1(a) states that "the goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties."

It is TDOT's opinion that the proposed alternative, which the public has accepted as the proposed alignment since the mid-1990s, is the best alternative for a variety of reasons. Since it impacts both the Wills Historic District and the

Johnson Hollow Historic District, TDOT has sought ways to minimize harm and mitigate the adverse effects to the two historic districts.

If you have any questions or comments regarding proposed mitigation measures, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Delaney". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Doug Delaney  
Director of the Environmental Division

DD/tas

cc: John Loney, TVA  
Danny Olinger, TVA  
Ruben Hernandez, Corps of Engineers  
Joe Garrison, TN-SHPO  
Martha Carver, TDOT  
John Hewitt, TDOT  
Amy Crowley, TDOT  
Becky Johnson  
Mayor of Mountain City  
Johnson County Mayor

**Draper, Harold M.**

**From:** Joe McCaleb [jwmccaleb@bellsouth.net]  
**Sent:** Friday, March 31, 2006 10:26 PM  
**To:** Loney, Jon M.; Draper, Harold M.  
**Cc:** Becky Johnson; Charles Johnson; sfuhr@tva.gov  
**Subject:** Re: Proposed MOA and State Route 91, Johnson County  
**Importance:** High

Mr. Loney and Mr. Draper,

As I promised in my email copied below, attached is a landscape and mitigation plan offered by Becky Johnson and her father, Charles Johnson for mitigation of the losses to their historic farm. These proposals are offered in good faith for discussion with TVA, SHPO and TDOT in lieu of litigation to resolve the issues. After you have had some time to review this, please respond to us. I am on vacation beginning April 2 through April 9 2006, but I can be reached if necessary. Should an agreement be reached, we will expect a written document signed by the parties incorporating the agreement or in the alternative, an MOA with these conditions imposed thereon and executed by the parties.

Sincerely,

**Joe W. McCaleb**

Joe W. McCaleb and Associates

Attorneys at Law

315 West Main Street, Suite 112

Hendersonville, TN 37075

615/826-7245

615/826-7823

615/824-1068 (fax)

jwmccaleb@bellsouth.net

----- Original Message -----

**From:** Joe McCaleb

**To:** hmdraper@tva.gov ; jmloney@tva.gov

**Cc:** Charles Johnson ; Becky Johnson

**Sent:** Tuesday, March 28, 2006 7:11 PM

**Subject:** Re: Proposed MOA and State Route 91, Johnson County

Mr. Loney and Mr. Draper,

I have attached an email I sent earlier today to Ms. Susan Fuhr and Ms. Ann Patrick.

This message is to advise that I have spoken with my clients and they are willing to sign the MOA on the **condition** that TDOT be willing to mitigate the damages done to the historic structures on their farm in the same way that agency and your agency mitigate other losses to natural and historic resources on other projects. Mitigation is an acceptable form of compromise and we are offering to discuss it.

On Friday of this week, I will send to you and offer to sign the MOA with a list of mitigating conditions. The basis for this demand is that TDOT willfully violated federal law and regulation by destroying structures

and natural resources already listed on the National Register and which the agency knew beforehand was listed. That offensive behavior is not being addressed by allowing TDOT to build the same road it has proposed to build all along and offer nothing more than a limp landscaping plan for planting trees that will take 20-50 years to mature. That landscaping plan, alone and unseen, is not sufficient and under no circumstances will the MOA be signed by my client based on a landscaping plan to be developed at some later date. That's called "buying a pig in a poke", and we aren't buying. Nor do I believe a federal judge would approve.

You may recall the last time I was in litigation with TVA involving the proposed quarry at Clifton, Tennessee, the Court ordered from the bench that the proposed plan to be developed in the future to protect the endangered species identified at that location would be developed before the project was allowed to go forward, not afterwards. The Court entered an injunction prohibiting the operation of both the TVA and Army Corps permits until a supplemental EA was prepared including the plan to protect the endangered species. Here, the principal is the same and we will not sign the MOA as proposed for reasons stated.

Please note the email msg below.

Sincerely,

**Joe W. McCaleb**

Joe W. McCaleb and Associates  
Attorneys at Law  
315 West Main Street, Suite 112  
Hendersonville, TN 37075  
615/826-7245  
615/826-7823  
615/824-1068 (fax)  
[jwmccaleb@bellsouth.net](mailto:jwmccaleb@bellsouth.net)

\*\*\*\*\*

Dear Ms. Fuhr and Ms. Patrick,

I telephoned Ms. Fuhr's office today, she was out and I was referred to Ms. Patrick. I called Ms. Patrick and left a message that I needed to speak with her. Since I did not get a call back, I am sending this msg.

I am legal counsel for Ms. Becky Johnson and her father Charles Johnson. They own historic properties that will be directly affected by the proposed route. Ms. Johnson is a signatory to the MOA.

Ms. Fuhr's letter cover letter to my client dated March 15, 2006 attaching the referenced MOA for her signature was not received until yesterday, March 27th. The likely reason for the delay is that my client had moved recently and the forwarding process took time. The purpose of my call was a request that she have 10 days from date of receipt to either sign or explain why not. That would mean a response on or before April 7th. Since this EA and MOA process has been ongoing for 2 years, our request is reasonable due to the circumstances. If accepted, please confirm by answering this email message or calling my office.

Sincerely,

**Joe W. McCaleb**

Joe W. McCaleb and Associates  
Attorneys at Law  
315 West Main Street, Suite 112

Hendersonville, TN 37075

615/826-7245

615/826-7823

615/824-1068 (fax)

[jwmccaleb@bellsouth.net](mailto:jwmccaleb@bellsouth.net)

**Proposed Landscape plan** (to be agreed to **before** the MOA is signed by Becky Johnson):

1. TDOT shall hire a consulting landscape architect that is mutually agreeable to the Johnsons to assist TDOT's staff landscape architect in developing the landscape plan.
2. TDOT shall have a preliminary sit-down meeting with the Johnsons, the third party landscape architect and TDOT's landscape architect to discuss the goals of the landscape plan, primarily to reduce visual and audible impact of road.
3. TDOT staff and third party landscape architect shall work in conjunction to develop a landscape plan. The landscape plan should include a detailed map of the length of the road on the Johnson farm with to-scale drawings of placement of trees and specific species to be planted. The plan should include both an aerial viewpoint and side elevation. The plan should also include an artist's rendering of what the landscaped road will look like from the perspective of the home site on the Johnson Farm.
4. After being provided with a copy of such a landscape plan, TDOT shall schedule a second sit-down meeting with Johnsons, third party landscape architect and TDOT's staff landscape architect to discuss any changes or revisions.
5. The landscape plan should be started within six months of letting a new contract for the road and completed before the highway can be opened to traffic. The third party landscape architect will oversee the installation of the landscape plan with three site visits, one of which should be upon completion of the landscape plan.
6. For five years, TDOT will survey landscape plan annually and will replace any plants annually that do not survive.

**Historic mitigation demands:** In mitigation of the destruction of historic features on the Johnson Farm; in mitigation for dividing the historic farm in such a manner that one entire field will be separated and therefore removed from the historic register as part and parcel of the historic Appalachian agriculture practices exhibited by the farm; in mitigation for the lost of farming income on this working farm due to the bisecting highway; and in further mitigation for the "use" and "constructive use" as those terms are defined in 23 CFR Section 771.135(p)(2)(4)(i – iii), which the highway will subject and imposed upon the historic Johnson Farm, TDOT shall:

- Replace rotten weatherboard siding and soffits on the home place. Caulk siding on entire house. Paint house.
- Replace/repair siding on smoke house and wash house. Paint smoke house and wash house.
- Repair rotting sills and joists in foundation of home place and stabilize the foundation.
- Repair/replace lower barn siding and doors.
- Stabilize the upper barn and silo.
- Stabilize the granary and repair sagging joists.

**Draper, Harold M.**

**From:** Joe McCaleb [jwmccaleb@bellsouth.net]  
**Sent:** Tuesday, March 28, 2006 8:11 PM  
**To:** Draper, Harold M.; Loney, Jon M.  
**Cc:** Charles Johnson; Becky Johnson  
**Subject:** Re: Proposed MOA and State Route 91, Johnson County  
**Importance:** High

Mr. Loney and Mr. Draper,

I have attached an email I sent earlier today to Ms. Susan Fuhr and Ms. Ann Patrick.

This message is to advise that I have spoken with my clients and they are willing to sign the MOA on the **condition** that TDOT be willing to mitigate the damages done to the historic structures on their farm in the same way that agency and your agency mitigate other losses to natural and historic resources on other projects. Mitigation is an acceptable form of compromise and we are offering to discuss it.

On Friday of this week, I will send to you and offer to sign the MOA with a list of mitigating conditions. The basis for this demand is that TDOT willfully violated federal law and regulation by destroying structures and natural resources already listed on the National Register and which the agency knew beforehand was listed. That offensive behavior is not being addressed by allowing TDOT to build the same road it has proposed to build all along and offer nothing more than a limp landscaping plan for planting trees that will take 20-50 years to mature. That landscaping plan, alone and unseen, is not sufficient and under no circumstances will the MOA be signed by my client based on a landscaping plan to be developed at some later date. That's called "buying a pig in a poke", and we aren't buying. Nor do I believe a federal judge would approve.

You may recall the last time I was in litigation with TVA involving the proposed quarry at Clifton, Tennessee, the Court ordered from the bench that the proposed plan to be developed in the future to protect the endangered species identified at that location would be developed before the project was allowed to go forward, not afterwards. The Court entered an injunction prohibiting the operation of both the TVA and Army Corps permits until a supplemental EA was prepared including the plan to protect the endangered species. Here, the principal is the same and we will not sign the MOA as proposed for reasons stated.

Please note the email msg below.

Sincerely,

**Joe W. McCaleb**  
Joe W. McCaleb and Associates  
Attorneys at Law  
315 West Main Street, Suite 112  
Hendersonville, TN 37075  
615/826-7245  
615/826-7823  
615/824-1068 (fax)  
jwmccaleb@bellsouth.net

\*\*\*\*\*

Dear Ms. Fuhr and Ms. Patrick,

I telephoned Ms. Fuhr's office today, she was out and I was referred to Ms. Patrick. I called Ms. Patrick and left a message that I needed to speak with her. Since I did not get a call back, I am sending this msg.

I am legal counsel for Ms. Becky Johnson and her father Charles Johnson. They own historic properties that will be directly affected by the proposed route. Ms. Johnson is a signatory to the MOA.

Ms. Fuhr's letter cover letter to my client dated March 15, 2006 attaching the referenced MOA for her signature was not received until yesterday, March 27th. The likely reason for the delay is that my client had moved recently and the forwarding process took time. The purpose of my call was a request that she have 10 days from date of receipt to either sign or explain why not. That would mean a response on or before April 7th. Since this EA and MOA process has been ongoing for 2 years, our request is reasonable due to the circumstances. If accepted, please confirm by answering this email message or calling my office.

Sincerely,

**Joe W. McCaleb**  
Joe W. McCaleb and Associates  
Attorneys at Law  
315 West Main Street, Suite 112  
Hendersonville, TN 37075  
615/826-7245  
615/826-7823  
615/824-1068 (fax)  
[jwmccaleb@bellsouth.net](mailto:jwmccaleb@bellsouth.net)

# JOHNSON COUNTY GOVERNMENT

Dick Grayson, County Mayor  
222 Main Street  
Mountain City, TN 37683  
Phone (423) 727-9696



January 26, 2006

Dear Property Owners Effected by Construction:

Much has been said about the delays in construction of the TDOT project commonly known as the "Mountain City By-Pass."

Both Mayor Burniston and I have shared concern about the future of this matter. Although we expect construction to start up sometime in the spring of 06, we would be happy for you to share your feelings about the project in writing and in turn allow us to furnish the information to TDOT.

We welcome your comments to either Mayor Burniston or me and have enclosed a stamped self addressed envelope for your convenience. Please return your comments as soon as possible.

Thank you for your cooperation.

  
County Mayor, Dick Grayson

  
City Mayor, Harvey Burniston

March 24, 2006

Subject:  
Proposed State Route 91 realignment

To:  
Dick Grayson, Johnson County Mayor  
Harvey Berniston, Mountain City Mayor

Thank you for the opportunity to share our views on the status of the proposed state Highway 91 realignment. As you well know, the Johnson family is opposed to the construction of a highway across our historic farm. The historic Johnson farm has been in the Johnson family as a working farm for five generations. We are the direct descendents of Thomas Johnson for whom Johnson County was named.

The preservation of the Johnson Farm is not merely a matter of local heritage, however, but has been recognized as a site of national historic value and an asset to the collective and shared heritage of the entire nation by its listing on the National Register of Historic Places. Communities that cherish and promote their historic sites, rather than diminish and compromise them, reap significant economic benefits in tourism, an industry I understand Mountain City would like to see more of.

Federal law prohibits the destruction of historic property for a highway project unless there are no other alternatives. As you and I both know, there indeed are other alternatives that would fulfill the stated purpose of the project and avoid our historic farmstead. Should Tennessee Valley Authority and the Army Corps issue federal permits for this project, their agencies will be in violation of federal law. We are demanding the highway be removed from our farm and rerouted along one of the many other alternative alignments.

We commend the Tennessee Valley Authority for requiring TDOT to evaluate and reconsider the other viable alternatives. We hope this is not a futile exercise, however, but that it lives up to the spirit and intent of Section 106. Retroactively going through the motions of Section 106 but in the end permitting the current alignment would be a thinly veiled, inadequate attempt to comply with federal law. We expect TVA will not aid and abet TDOT in violating federal law.

Under federal law, TDOT was required to embark on Section 106 compliance before they purchased historic property for a highway, not after. The fact that TDOT barreled ahead with the project with reckless disregard for federal law is their fault, not ours, and must be corrected.

Our farm was taken under the threat of eminent domain. Our family did not sell the property willingly. At a meeting in the Johnson County high school cafeteria with property owners along the road, we told a representative of TDOT that we would not let

them take our family farm. He replied that TDOT goes to court every day. If we did not sell, they would go to court, take our land and we would get far less for it than what they were offering. This threat succeeded in intimidating my elderly aunt, the property owner at the time, into selling.

The construction of highway 91 across the Historic Johnson Farm will likely result in the delisting of the farm from the National Register. The entire farm, more than 100 acres, is listed on the national register, not simply the home site. According to the National Register, the historic attributes of the farm included the fence rows and spatial orientation of historic agricultural practices, which have been destroyed by TDOT grading activity.

A cattle pond, constructed as part of the Farm Demonstration Program of the early 1900s, also was listed on the National Register of Historic Places as a contributing historic feature. It, too, was bulldozed, without permits.

A 1910 tenant house was also listed as a contributing feature of the farm. The National Register documentation describes in detail the significance of the intact tenant house found at the Johnson farm. Very few examples of tenet houses remain despite the important economic contribution of farm tenets to late 19<sup>th</sup> and early 20<sup>th</sup> century Appalachian society. Sadly, it, too, was bulldozed, forever erasing this piece of history that conveyed the complete picture of an early Appalachian farm.

These destructive activities taken together will declassify much of the Johnson Historic Farm from inclusion of the National Register. There is ample evidence that TDOT knew of the concerns associated with routing this road across historic property but conspired to circumvent federal regulations.

Perhaps most troubling is TDOT's reckless disregard for the spirit and intent of Section 106 once they belatedly embarked on it. In an April 2003 email from Martha Carver, TDOT historic specialist, to Angela Duncan, TDOT roadway specialist, Carver states:

"We wrote the Corps and TVA 3/11/03 and asked them to define their APE and asked both agencies what they wanted us to do to comply with Section 106. Neither has responded. Both agencies should be able to take our old state reports and just put new cover letters on and get the 106 clearance... Once they get started, there are two 30 day waiting periods in our process so we aren't going to get clearance too quickly."

It is evident that TDOT staff treated Section 106 as a mere bother. Slapping a new cover letter on an old report does nothing to fill the requirements laid out in Section 106. Section 106 calls for destruction of historic property to be avoided first and foremost. It is clear TDOT did not do this. Section 106 also requires a sincere attempt to contact interested parties to participate in a public 106 process, not simply letting 30 calendar days pass by and calling it a comment period.

The time for Section 106 compliance was early in the planning stages, when TDOT had ample opportunity to reroute the road to avoid historic property.

In a Nov. 1996 letter to TDOT, Herbert Harper with the Tennessee Historical Commission called attention to the Johnson Historic District and had this to say:

“We request that your agency reconsider this project in light of this finding in order to determine a way on which this effect can be avoided or minimized.”

But in fact, TDOT's staff already knew this and had raised red flags of their own about the destruction of historic property. A field survey was conducted in 1992 by TDOT and SHPO identifying the Johnson Hollow Historic district as eligible for the National Register. The results were referred to in the Oct. 1996 Documentation of Effects for the project. In it, Martha Carver, a TN-DOT historic officer, stated:

“It is the opinion of TN-DOT that the proposed project would adversely affect both the propose Johnson Hollow Historic District and the Wills Historic District. The State Historic Preservation Office has indicated to the TN-DOT that the construction of this project as presently planned will result in both the Johnson Hollow Historic District and the Wills historic district no longer eligible for the National Register...

“TN-DOT's recommended alignment to avoid impacting the proposed Johnson Hollow Historic District was alternative ABC. This alternative, which included a short by-pass around the immediate Mountain City area before widening along the existing State Route 91 corridor, avoided the proposed Johnson Hollow Historic District and could have avoided the proposed Wills historic district.

“Due to opposition from local officials and from the public, TN-DOT is not proposing to build this alternative.”

Federal law requires road projects with federal permits to avoid historic property. The law does not allow exceptions simply because local officials don't like the alternative routes.

TN-DOT grossly failed when presenting alternatives for this project to the public. An alternative that would have avoided the Johnson Hollow historic district was not adequately considered, according to TDOT's 1996 documentation of effects.

“The preliminary 1992 survey identified the Johnson Hollow corridor as the core of a large rural historic district.

“In an effort to avoid the proposed Johnson Hollow Historic District, TN-DOT made a preliminary evaluation of an alignment further west that ran along the floor of Jenkins Hollow, which lays parallel to Johnson Hollow, and turning eastward at Wills before merging with the existing alignment of State Route 91.

“However, TN-DOT eliminated this corridor in the early planning stages because it did not meet traffic needs and due to the cost. Also, local officials did not like this alignment.”

Section 106 requires historic property to be avoided if feasible alternatives are available. Clearly, a feasible alternative is available. The law does not allow the destruction of historic property merely because local officials do not like the other alternatives, or because another alternative would cost more.

It is unclear what traffic needs the Jenkins Hollow alignment did not meet. The only apparent difference between the Jenkins Hollow and Johnson Hollow routes is that the Johnson Hollow route passes by the front entrance to a subdivision being constructed by Wiley Roark, the owner of Maymead asphalt company. I think we all understand the inference here.

TN-DOT documents reveal that alternative D — the route bisecting the Alfred Johnson Historic Farm, was lobbied for heavily by local officials.

The 1996 Documentation of Effects for the project states:

“In response to requests by local officials, TN-DOT developed Alternative D, now the preferred alternative. Alternative D is largely on new location and bisects both the Johnson Hollow Historic District and the Wills historic district.”

Those lobbying efforts should not drive a state agency such as TDOT to dismiss their obligations under the law, and should not sway TVA to be a party to violating federal law by issuing permits for such a project.

In closing, I again thank you for the opportunity to brief you on our opinions regarding the proposed State highway 91 realignment.

Sincerely,  
Becky Johnson

cc:  
Harold Draper, TVA  
Ed Cole, TDOT  
Tom McCulloch, ACHP  
Ruben Hernandez, USACOE

051890201  
ID # 051892672

**JOE W. McCaleb and Associates**

**Attorneys at Law**

315 West Main Street, Suite 112  
Hendersonville, TN 37075

Office (615) 826-7245  
Office (615) 826-7823  
Fax (615) 824-1068

Joe W. McCaleb  
Emily Yao

jwmccaleb@bellsouth.net  
emilyyao@bellsouth.net

June 21, 2005

Submitted via E-mail and U.S. Mail

**RECEIVED**

Environmental Policy and Planning

Mr. Jon M. Loney, Manager  
NEPA Administration  
Environmental Policy and Planning  
Tennessee Valley Authority  
400 W. Summit Hill Drive  
Knoxville, TN 37902-1499

JUN 28 2005

Doc. Type: EA-Administrative Record  
Index Field: Public Comment  
Project Name: TN 91 Mountain City Bypass  
Project No.: 2003-85

Re: Becky Johnson and Charles Johnson Comments  
To DEA for SR 91 Improvements in Johnson County, TN

Dear Mr. Loney,

Thank you for providing me a copy of the Draft Environmental Assessment (DEA), and your letter of May 23, 2005 allowing me to June 24, 2005 to comment. My comments made on behalf of clients, Becky Johnson and father, Charles Johnson, are stated below in numbered paragraphs. I have provided a copy to Harold Draper and J. Ruben Hernandez (USACE).

1. P. 4: The purpose and need for the project is inadequately discussed. The stated purpose of improving traffic flow in the Mountain City area is contrary to the early statements of the County Commission to improve economic potential in Mountain City. Frequently, highway projects are excused by relying on traffic volumes when the real purpose is economic sprawl. Only conclusions are drawn about "traffic volumes" with no supporting data offered. If traffic volumes are increasing along the 91 corridor, what traffic studies or counts have been done? How many Daily Vehicle Miles (DVM) have been calculated and over what period of time, using what models?

2. P. 4: The water quality certification issued by TDEC in August 2003 is faulty and should be withdrawn. That certification was based on inadequate information and inaccurate data submitted by TDOT in its permit applications to TDEC. The information did NOT include a description of the globally significant Sutherland Swamp (Wetland) that lay in the direct path of the alternative chosen by TDOT (Alt. D). In fact, TDEC later admitted on December

10, 2003, by letter from Director Paul E. Davis, that TDEC learned of the wetland after the permits were issued. Ms. Rachel Doughty, Attorney for WILDLAW, wrote a detailed 8-page letter to TDEC Commissioner Jim Fyke on May 3, 2005 requesting TDEC to revoke that certification. TVA should have a copy of that letter. I adopt that letter and request for certification revocation, and make it a part of these comments. I acknowledge the comment on page 7 of the DEA that a "revised certification is under review", however, I am requesting more than a "revised certification" because more than just the Laurel Branch wetlands lay in the path of Alternative D.

3. P. 4: Thank you for extending the scope of the project analysis to the entire length of the roadway project, as NEPA demands, and not segmenting.

4. PP. 7-20: The following comments are offered relative to Alternatives. We endorse and recommend TVA, USACE and TDOT choose Alternative I for the Hwy 91 realignment. We note, however, that the colored map in the back of the DEA, titled as "SR91 Alternatives and Cultural Resources, Draft Map", is too small of scale to get an accurate picture of all the alternatives, particularly the combined alternatives depicted. The Final EA needs to include a larger scale map.

**Alternative I is recommended because:**

- a) The cost is only 1 million dollars more than Alt. D, an insignificant sum for highway construction.
- b) In addition to the advantages noted in the chart on pp. 8-9, the DEA overall shows that Alt. I will have fewer impacts or impacts of lesser intensity (CEQ Regulations, Part 1508.27(b)) than Alt. D.
- c) The DEA notes that streams in the southern part of the project drain to Roan Creek. Roan Creek is on Tennessee's 303(d) list as impaired for sediment and pathogens for at least 6 miles. Laurel Creek is classified as a "Natural Reproducing Trout Stream" (NRTS). Both of these streams need to be guarded against erosion and sediment deposition which is so common in highway construction.
- d) Alternative I is the preferred route also because it routes construction and development away from these two sensitive waters. Alt. D, on the other hand, would likely impact both.
- e) Alt. I shifts alignment away from the valley floor. The valley floor gives both the Johnson HD and the Wills HD their significance and eligibility for listing on the National Register because they both are examples of late 19<sup>th</sup> and early 20<sup>th</sup> Century Appalachia farming practices. By shifting the alignment to the ridgeline, impacts to these two historical districts are significantly reduced, and does not threaten the status of either. As noted in the DEA, both HDs are touched only on the eastern boundary of each with the possibility of only a barn on the Wills HD being taken. That is a far less impact than Alt. D that would completely remove both HDs from being

NRHP-eligible; and would cause material harm to the Alfred Johnson Farm by removing it from the National Register.

- f) The noise impacts would also be less for both HDs as well as the valley in general. Alt. D and its accompanying Alt. H (Wills HD), however, would put traffic including heavy trucks through the valley with sound reverberating off the surrounding mountains, making noise an even greater factor.
- g) It is true that Alt. I may present noise and aesthetic impacts to the Marsh House, however, Alt. I will not cause the Marsh House to be removed from eligibility, nor will it cause physical damage to the Marsh House. Moreover, Alt. I will cause the displacements of fewer structures than Alt. D.
- h) Alt. D would alter water flow in several stream watersheds and impact the Laurel Creek directly by impacting the tributaries to Laurel Creek; and possibly Roan Creek indirectly. Erosion and sediment deposition into Laurel Creek is of particular concern because of its NRTS state classification. Additionally, Alt. D would adversely impact the Wills Branch wetlands and would require channel relocations in Wills Branch; and would likely impact the Laurel Branch (Sutherland) wetlands, although to a lesser degree.
- i) In contrast, Alt. I would not impact any wetlands; would impact Laurel Creek only indirectly because the alignment would cross Drystone Branch approximately one stream mile south of the Drystone Branch intersection with Laurel Creek (USGS Laurel Bloomery Quad, 213-SE). The DEA notes on page 13 that Alt. I would impact "Goose Creek tributaries"; however, that seems unlikely since Goose Creek is two watersheds to the west, beyond the current Hwy 91, beyond its intersection with Johnson Hollow Branch and flowing west and south of U.S. 421. (USGS Mountain City, TN. Quad). The spring that the DEA mentions as feeding Goose Creek and would be impacted in some way by Alt. I, is not designated in the DEA and is unknown to this writer. Since Alt. I begins at a point some distance from Goose Creek, we can only assume the DEA is referencing the headwaters of a small tributary to Johnson Hollow Branch which then flows nearly one stream mile southwest before intersecting with Goose Branch above U.S. 421. To us, that impact seems like a stretch, at best.
- j) The DEA addresses visual impacts of Alt. I from Iron Mountain and from somewhere in North Carolina. ( In the chart, the DEA mentions a "Stone Mountain", but does not say where that is located). It is noted that Alt. I places the realignment in higher elevation than Alt. D, however given the regional haze and atmospheric pollution that dominates the East Tennessee mountains from the Virginia line south to Georgia, hikers along the Iron Mountain Trail or other trails in the Cherokee Forests would probably welcome a clear day to actually see another ridgeline, 4

miles to the East, as the crow flies (USGS Laurel Bloomery Quad, 213-SE). Of more concern to hikers or anyone exercising or engaging in recreation at elevations is breathing clean air, not knowing whether or not a new highway is being constructed 4 miles to the East. (As a former hiker of the Appalachian Trail, I can personally attest to that truth.)

- k) Finally, the DEA mentions that abandoning Alt. D, the ROW which TDOT acquired illegally prior to securing permits, would increase project costs because more ROW would likely be acquired with Alt. I. It is a poor argument to justify an alternative by saying "what is done is done". Some of the funds paid for Alt. D ROW could be recouped by TDOT if that ROW is returned. For one, the Alfred Johnson family has already offered TDOT a return of some of the funds paid for the ROW cut through that farm provided TDOT repair some of the damage it caused. TDOT acted illegally by acquiring ROW in contravention of federal and state law and the NHPA. It is unconscionable that the agency be allowed to benefit from its own illegal acts to the harm and damage of private citizens.

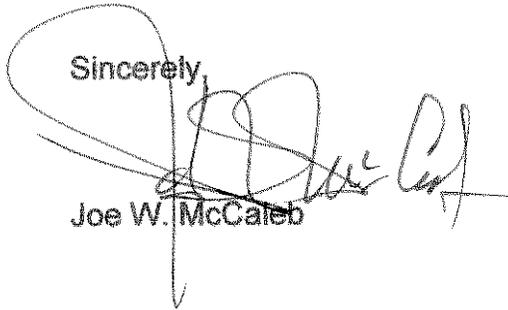
5. Lastly, the following comments address the MOA, Draft 5, to which, Becky Johnson is signatory as a consulting party.

A. We appreciate TVA's upfront and open admission that TDOT unlawfully begin ROW construction before securing federal and state permits and before even initiating Section 106 consultations resulting in harm and damage caused to the Alfred Johnson Farm. Additionally, we appreciate TVA incorporating our earlier recommendations in Stipulations 2 and 3.

B. We agree partially with the 6<sup>th</sup> and 7<sup>th</sup> WHEREAS clauses stating that TVA has determined that all alternatives examined will have an adverse impact to the Johnson and Wills Historic Districts, but the language of the two clauses appears to treat all the impacts equally, which the DEA clearly shows is not the case. Alternative I clearly will have fewer impacts than Alt. D; avoids some impacts altogether (Alfred Johnson Farm, wetlands, some stream crossings, etc.) and minimizes others. We, therefore, do not agree with language that does not make a distinction between the alternatives examined in the NEPA document.

This concludes the comments offered by Becky Johnson and her father, Charles Johnson, by and through their attorney Joe W. McCaleb. We appreciate the opportunity to comment on the DEA. Please forward me a copy of the Final Environmental Assessment when published for release. We believe further consideration should be given the MOA in keeping with these remarks.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe W. McCaleb", written over the printed name below it.

Joe W. McCaleb

cc: Becky Johnson  
Charles Johnson  
Harold Draper, TVA  
J. Ruben Hernandez, USACE  
Rachel Doughty, Esq.

May 3, 2005

401 Church Street  
L & C Annex, 1st Floor  
Nashville, Tennessee 37243-0435

**Re: Clean Water Act 401 certificate and Tennessee Aquatic Resource Alteration  
Permit NRS File # 02.454 for Sutherland Swamp**

Dear Commissioner Fyke:

On behalf of the League of Women Voters of Watauga, the Tennessee Chapter of Public Employees for Environmental Responsibility, and the State of Franklin Sierra Club I request that you reexamine permit NRS #02.454 issued in 2003 by the Tennessee Department of Environment and Conservation ("TDEC") which allows avoidable impacts to Sutherland Swamp as part of a road construction project.<sup>1</sup> I ask also that you cease progress on the permit NRS #04.420 request described by public notice #05-24 because this and the permit issued in 2003 in reality cover the same project and should therefore be considered together.

TDEC issued a Clean Water Act § 401 certification and Tennessee Aquatic Resource Alteration Permit ("ARAP") in response to a Tennessee Department of Transportation ("TDOT") application (referred to collectively as "August 2003 certification" hereinafter).<sup>2</sup> Now TDOT has requested permission to expand its impact to include additional wetlands.<sup>3</sup> Because the certification was issued on the basis of inaccurate and incomplete information, we request that the August 2003 certification be withdrawn and that TDEC require TDOT to reconsider the project as a whole and reapply now that all facts are known.

The wetland which concerns us is Sutherland Swamp in Johnson County. Sutherland Swamp is located along proposed State Route 91 from U.S.421 to North of Cole Springs Road.

---

<sup>1</sup> Technically, because of its hydrology, vegetation, and soils, Sutherland "Swamp" is a complex wetland, perhaps better described as an Appalachian artesian spring and calcareous artesian seepage fen complex. In addition, there are associated beaver ponds which provide important bird habitat. Swamp, therefore, is an inaccurate and simplistic term if one is trying to be scientifically accurate. However, wetlands in general are commonly referred to as swamps in Johnson County, and Sutherland Swamp has always been so called by those who live in the area and value its beauty and value in ecosystem services. Therefore, that is the terminology I will use in this letter.

<sup>2</sup> This is NRS # 02.454.

<sup>3</sup> See Public Notice # 05-24 issued January 6, 2005 by the Tennessee Department of Environment and Conservation, expiration date February 5, 2005.

46 Haywood Street, Suite 323  
Asheville, NC 28801  
828.252.9223  
828.252.9074 (fax)  
www.wildlaw.org

This wetland is classified as an Appalachian Calcareous Artesian Seepage Fen—"only the second known occurrence of this globally rare wetland community type."<sup>4</sup> Because TDOT submitted inaccurate maps with its application and because of miscommunication within TDEC, the August 2003 certification was issued without TDEC even being aware of the existence of the most significant wetlands. TDEC is now considering allowing TDOT to expand the project area to include an additional 0.069 acres of wetland as well as a spring seep and a small channel which were not included in the original application.<sup>5</sup> This should not be done until the original omissions are addressed, or the result will be segmented consideration of the project. It would be a mistake and a waste of public funds to leave consideration of the most significant impacts to aquatic resources until after considerable time and energy have been sunk into the project. This would set a poor precedent for future applicants who might intentionally submit incomplete applications realizing they could be easily amended later. A more relaxed permitting process would make TDEC's job more difficult and would frustrate the public's ability to understand and participate in the permitting process. For these reasons, we hope you will require that the whole impact to Sutherland Swamp and its surrounds be considered in one certification.<sup>6</sup>

### **The August 2003 Certification Should be Withdrawn**

The Tennessee Department of Transportation sought and then received certification from TDEC to proceed with the Route 91 project on August 7, 2003 ("August 2003 certification").<sup>7</sup> Because of the commissioner of TDEC's "obligation to take all prudent steps to secure, protect, and preserve [the] right" of the people of Tennessee to unpolluted waters, certification should not have been granted, and perhaps would not have been had all facts been before the agency.<sup>8</sup> **You have the authority to revoke this certification under T.C.A. § 69-3-108(2) because TDOT "[o]btain[ed] the permit by misrepresentation or failing to disclose fully all relevant facts" and because TDEC was therefore not able to consider practicable alternatives to destroying Sutherland Swamp.**<sup>9</sup>

To obtain a § 401 Certification under the Federal Clean Water Act or an individual Aquatic Resource Alteration Permit, the applicant (TDOT) "must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination, including an evaluation of practicable alternatives."<sup>10</sup> TDOT's application

<sup>4</sup> James T. Donaldson, Botanist and Biological Consultant, *Sutherland Wetland Ecological Community Classification* (May 2004)(attached).

<sup>5</sup> While these numbers may seem small, Between the 1780s and 1980s Tennessee lost 59 percent of its wetland acres. [http://www.epa.gov/owow/wetlands/vital/cpa\\_media/usa.gif](http://www.epa.gov/owow/wetlands/vital/cpa_media/usa.gif). This trend has not been reversed. Because wetlands are often biological hotspots the ecosystem values they provide exceed their proportional share of the landscape. Once lost, many wetland types are difficult to restore or create.

<sup>6</sup> There is precedence for revoking a certification because of incomplete survey work. The 840 bypass was halted because multiple streams were encountered in construction that were not present on the survey maps.

<sup>7</sup> Rule 1200-4-7-03(4): "Certification" means an Aquatic Resource Alteration Permit under the Tennessee Water Quality Control Act of 1977, as required by §401 of the Federal Water Pollution Control Act, which certifies, either unconditionally or through imposition of terms under which the activity must be carried out, that the activity will comply with applicable provisions of §§301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Chapter 1200-4-1 of the Rules of the Water Quality Control Board and the Department of Environment and Conservation and the Act.

<sup>8</sup> Tenn. Code Ann. § 69-3-102(a).

<sup>9</sup> See also Rule 1200-4-7-04(6)(b)(2).

<sup>10</sup> Rule 1200-4-7-04(3)(b) & (5)(a).

included inaccurate, and therefore misleading, maps and information. TDEC has not disputed this, acknowledging that at the time the August 2003 certification was issued TDEC was unaware of the high quality wetland in the project area:

It was after the issuance of permits for the project that a new wetland area in the path of the proposed highway project came to our attention. The area in question had been classified by TDOT as a braided stream channel rather than a wetland, and a stream channel relocation was proposed. It is this wetland that contains the identified rare plant species.<sup>11</sup>

Because of a lack of communication between TDEC's field staff and those in the Nashville offices, the permit-writing staff issued a permit to destroy a wetland they did not even know existed. Paul Davis admitted that "[t]he new information should have been immediately communicated to the permit section, but that did not happen. The permits for this project were finalized on August 7, 2003."<sup>12</sup> The effect is that TDEC issued a certification to alter "a braided stream channel rather than a wetland."<sup>13</sup> This cannot therefore be a valid certification for effects to the Sutherland Swamp.

While TDEC assured that "[e]ven though the communication with the permit office did not occur in time to hold up permit issuance pending resolution of the issue, activities were underway in the local area to assure that the overlooked area was given due consideration."<sup>14</sup> This is putting the cart before the horse. The purpose of the permitting process is to ensure that the environmental implications of a project are considered *before* permits are granted allowing waters of the State to be impacted. The Commissioner is required to consider the following factors in making his decisions on a permit *application*:

1. direct loss of stream length, waters, or wetland area due to the proposed activity;
2. direct loss of in-stream, waters, or wetlands habitat due to the proposed activity;
3. impairment of stream channel stability due to the proposed activity;
4. diminishment in species composition in any stream, wetland, or state waters due to the proposed activity;
5. direct loss of stream canopy due to the proposed activity;<sup>15</sup>
6. whether the proposed activity is reasonably likely to have cumulative or secondary impacts to the water resource;<sup>16</sup>
7. conversion of unique or high quality waters as established in Rule 1200-4-3-.06 to more common systems;
8. hydrologic modifications resulting from the proposed activity;
9. the adequacy and viability of any proposed mitigation including, but not limited to, quantity, quality, likelihood of long term protection, and the inclusion of upland buffers;<sup>17</sup>
10. quality of stream or wetland proposed to be impacted;
11. whether the state waters is listed on the §303(d) list; whether the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters, or waters identified as high quality

<sup>11</sup> See letter from Paul E. Davis, Director, Division of Water Pollution Control to Cathy Landers (Dec. 10, 2003)(attached).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> This factor is especially relevant on the upper reaches of Wills Branch.

<sup>16</sup> Degradation by sedimentation is cumulative; increase in volume & speed of runoff caused by filling and drainage of the road, is secondary.

<sup>17</sup> Mitigation wetlands are seldom adequate replacements. Much of the Shady Valley mitigation wetlands are overrun or in danger of being overrun by a water-tolerant pasture grass, eliminating most native species. Rick Foster, personal communication April 25, 2005 (available on request).

waters as defined in Rule 1200-4-3-.06, known as Tier II waters; whether the activity is located in a waterway which has been identified by the Department as having contaminated sediments; and whether the activity will adversely affect species formally listed in State and Federal lists of threatened or endangered species; and

12. any other factors relevant under the Act.<sup>18</sup>

Only after each of these considerations has been weighed and addressed should a permit be issued. Since that was not the case here, we respectfully request that the August 2003 certification be withdrawn until such an evaluation can be made.

The fact that the previous commissioner was unable to consider each of the elements above before issuing the August 2003 certification strongly suggests that public notice could not have contained all information required by Rule 1200-4-7-.04(b). Rule 1200-4-7-.04(c) requires that the public notice include (among other things):

3. A brief description of the proposed activity;
4. A brief description of the scope of the proposed activity;
5. The location of the state waters impacted by the proposed activity;
6. A sketch or detailed description of the location of the proposed activity and the subject waters of the state;
7. The purpose of the proposed activity;
8. The watershed of the subject waters;
9. A description of the conditions of the subject waters and the watershed, (e.g., physical conditions of the waters, quality of the waters such as size, flow, substrate, channel, etc.)

As indicated above, at the time the permit decision was made, TDEC mistakenly believed it was dealing with a stream, not a wetland, and therefore public notice was inadequate.

That the August 2003 certification has not yet been withdrawn has caused confusion by the public and within the involved agencies. Even if TDOT did not intend to segment the project into two projects, this is the result. Because of the omissions in the original TDOT permit, TDEC has not presented the entire project to the public, nor has it considered the whole effect on the Sutherland Swamp either in the new or the supplemental certification. Therefore, there are two certification processes for only one project. We appreciate TDEC's efforts to protect wetlands in Tennessee. Part of doing so is admitting when the agency makes a mistake, as Mr. Davis has admirably done. The second step is to correct that mistake. We hope you will do so by withdrawing the August 2003 certification, looking at the project as a whole, and communicating the impacts to the whole wetland with the public.

TDEC's rules require that "if the nature of the affected waters is such that mitigation is not reasonably likely to result in no net loss of water resource values, and if there is a practicable alternative to the activity which through avoidance or minimization of impacts would result in no net loss, then such alternative shall be selected."<sup>19</sup> TDOT's application offered no evaluation of practicable alternatives. It merely asserted that alternatives were considered. Apparently all of those alternatives followed the existing route of the road and would neither have entered the valley, nor damaged the Sutherland Swamp.<sup>20</sup> None of these alternatives was chosen, and the

<sup>18</sup> Rule 1200-4-7-.04(6)(c).

<sup>19</sup> Rule 1200-4-7-.04(5)(a).

<sup>20</sup> Personal communication with Brian Canada, TDEC (April 7, 2005).

only explanation we have been given to date is that the choice was made "due to historic property and right of way considerations."<sup>21</sup>

TDOT proposed to mitigate for the destruction of Sutherland Swamp by debiting, at a 2:1 ratio, 2.76 acres from the Shady Valley Wetland Mitigation Bank in Johnson County Tennessee.<sup>22</sup> This is the minimum ratio for wetland mitigation by restoration.<sup>23</sup> Considering the biological significance of the Sutherland Swamp, this is not an appropriate compensation for the permanent loss of resource value associated with this proposed project. Further, since TDEC was not even aware of the wetland at the time the permit was issued, it is impossible that the agency used its "best professional judgment" to determine the ratio "based on the resource value and functions of the affected wetland, resource value of the mitigation, and the likelihood of success of mitigation."<sup>24</sup> Likewise, TDEC could not have included a "monitoring and reporting program to document timely achievement of a successful mitigation wetland and remedial actions to correct any deficiency" for a wetland it did not know existed.<sup>25</sup>

The net result of the inverted permit process described above is that TDEC has certified an activity that will destroy a significant portion of a globally rare wetland type, with no alternatives analysis in the project file, and an admission that those writing the permit were not even aware of the existence of the wetland. To compensate for this loss to the citizens of Tennessee, TDOT will be required to purchase wetland credits at merely the minimum allowed ratio. Finally, since the U.S. Army Corps of Engineers also clearly relied on the same misleading language that was originally reported to TDEC to issue its CWA § 404 permit, the State has failed to fulfill the gatekeeper function that the § 401 certification is supposed to provide. We hope you will agree that these results are outside the spirit and letter of the law.

#### **Water Supply Status Needs to Be Considered**

Although there is no mention of this fact in the certification file, Sutherland Swamp and its associated springs is a water supply in dry years. Water was pumped from Wills Branch to Silver Lake during recent drought years to provide public water. TDEC should consider the public health implications as well as the financial implications of impacting a back-up water supply.

#### **Sutherland Swamp Needs to Be Evaluated for Classification as a High Quality Water**

There is no evidence that the excellent quality of the Sutherland Swamp was considered (or even realized) in issuing the August 2003 certification. Apparently a public hearing is proposed for June or July for the supplemental or new certification for the alteration of the additional 0.06 acres of wetland. This should not proceed until TDEC has complied with antidegradation rules.<sup>26</sup>

---

<sup>21</sup> *Id.*

<sup>22</sup> See letter from Angela L. Duncan, TDOT to Ron Gatlin (U.S. COE)(Nov. 18, 2002).

<sup>23</sup> See Rule 1200-4-7-.04(7)(b)(2).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at (b)(3).

<sup>26</sup> These new antidegradation rules were written after 3<sup>rd</sup> Circuit Court Judge Barbara Haynes found that public participation is a mandatory element of the State's anti-degradation rules and that existing rules were inadequate to provide that public participation.

Under Tennessee's regulations, the Sutherland Swamp likely is eligible for Tier II high quality waters status because it is a "[w]ater[] that provide[s] habitat for ecologically significant populations of aquatic or semi-aquatic plants or animals."<sup>27</sup> Degradation of Tier II high quality waters are allowed only in very limited circumstances. As such, TDEC cannot allow degradation of this water

unless and until it is affirmatively demonstrated to the Department, after full satisfaction of the following intergovernmental and public participation provisions, that a change is justified as a result of necessary economic or social development and will not interfere with or become injurious to any classified uses existing in such waters.<sup>28</sup>

Public participation associated with the August 2003 certification was inadequate because the scope of the impact was not disclosed in a public notice—the most critical part of the Swamp was omitted. The Fish and Wildlife Service ("FWS") recommended against certification in 2003 because "[d]etails of stream channel construction were not fully described in the subject public notice."<sup>29</sup> What is perhaps most telling in this statement is that the FWS was not even aware of the Sutherland Swamp and it could not grant its approval of this project.

Public participation once again will be inadequate in the proposed public hearing in June or July if TDEC has not considered the effect of TDOT's proposed project on the entire Sutherland Swamp and described the entire scope of the likely effects in the public notice.<sup>30</sup> Since this is a new plan, a new certification is required—both so that the involved agencies can credibly consider the project, and so that the public can be informed and included as required by law.

The State Route 91 project, as redefined, will cause degradation of the Sutherland wetlands. TDEC cannot merely amend the previous certification because the *de minimus* rule does not apply. Rule 1200-4-3-.04(4) defines *de minimus* impacts which will not be defined as degradation for the purposes of the antidegradation rules. Only those alterations with "no measurable or less than 5 percent loss of assimilative capacity" will be considered *de minimus*. Importantly, "[d]egradation will not be considered *de minimus* if a substantial loss (more than 50 percent) of assimilative capacity has already occurred."<sup>31</sup> The original certification already allowed filling of the majority of the Sutherland Swamp.<sup>32</sup> The additional 0.06 acres of wetlands that will be impacted due to the change of plans is therefore degradation under TDEC's own rules.

Tennessee's antidegradation rules require that an "alternatives analysis shall be part of the application process and shall include a discussion of the feasibility, social and economic considerations, and environmental consequences of each potential alternative."<sup>33</sup> Perhaps as a result of the inaccurate information TDEC was given, TDOT was allowed to choose the most

<sup>27</sup> Rule 1200-4-3.06(2)(a).

<sup>28</sup> Rule 1200-4-3.06(3)(a). See [http://www.epa.gov/waterscience/standards/wqslibrary/tn/tn\\_4\\_wqs.pdf](http://www.epa.gov/waterscience/standards/wqslibrary/tn/tn_4_wqs.pdf) which suggests that EPA has recognized Tennessee's new anti-deg rules (says effective Sept. 30, 2004).

<sup>29</sup> See attached letter from Lee A. Barclay, Field Supervisor, U.S. Fish and Wildlife Service, to Lt. Colonel Steven W. Gray, District Engineer, U.S. Army Corps of Engineers (April 4, 2003).

<sup>30</sup> See Rule 1200-4-3-.06(3)(d)(2).

<sup>31</sup> Rule 1200-4-3-.04(4).

<sup>32</sup> See map accompanying the 401 permit application.

<sup>33</sup> Rule 1200-4-3-.06(1).

environmentally damaging of the alternatives studied. The only explanation TDEC has for allowing this is historic property and right of way considerations.<sup>34</sup> No mention is made of the cost of constructing the road on the soluble karst bedrock supporting the Sutherland Swamp at the confluence of Wills Branch and Laurel Creek which is demonstrably unstable. The large springs and flooded sinkholes on this property will require expensive engineering to construct and maintain a safe and stable roadway. The permit allowed the "loss of 4015' of stream due to encapsulation within culverts, channel changes and stream loss. . . , the permanent filling of 1.38 acres of wetlands and temporary impacts to 0.08 acres of wetlands" even though several more environmentally benign and possibly economically sensible alternatives were available and plausible.

TDOT has failed to protect wetland value, despite its protestations that it considered alternatives. Angela Duncan of TDOT stated that "Efforts were made during the planning and design phases of this project to avoid impacts to waters of the U.S. and the State to the extent practicable, and to minimize impacts that were not avoidable. Mitigation for these impacts has been proposed on the project site, where practicable."<sup>35</sup> The record suggests that this is not the case. In fact, it appears that TDOT:

- Submitted construction plan maps that did not include the wetlands located during the pre-construction ecological survey at the site;<sup>36</sup>
- Chose the most damaging alternative (through a wetland, stream and its floodplain) ostensibly to avoid a historic area, but probably actually to reduce construction costs since routing the road through the pasture would have required more excavation;
- Said it would do on-site mitigation which the Fish and Wildlife Service found to be inadequate;<sup>37</sup>
- Incorrectly reported to members of the public that "the final wetland impact will be on the order of two-tenths of an acre";<sup>38</sup>
- Planned the road to curve into the wetland;
- Mischaracterized the quality of the wetland. TDOT asserted that "vegetation at these wetland sites was limited mainly to scattered clumps of rushes and sedges, with spicebush and jewelweed also present."<sup>39</sup>

## Conclusion

"Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted

---

<sup>34</sup> "The proposed alignment of SR-91 has been determined under the original permit. TDOT presented five alternatives (A-D) and the "no-build" alternative. The first three (A-C) followed, approximately, the existing SR-91. The final alternative (D) was selected to be the preferred alignment due to historic property and right of way considerations." Brian Canada, Personal communication (April 7, 2005). This is particularly ironic in light of the fact that TDOT is being sued by Becky Johnson for the destruction of her historic property which is located in the chosen road path.

<sup>35</sup> Angela L. Duncan, letter to Ron Gatlin, U.S. COE (Nov. 18, 2002).

<sup>36</sup> Phone conversation between Gabby Call, Nature Conservancy, and TDOT employees (August 2003)(see attached email).

<sup>37</sup> See footnote 29.

<sup>38</sup> See footnote 36.

<sup>39</sup> Letter from Lilah Miller, biologist from TDEC to Dan Eager TDEC (July 18, 2002)(attached).

waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right."<sup>40</sup> Governor Bredesen was elected to uphold this trust. The Sutherland Swamp certification presents an opportunity to TDEC to remedy past errors, demonstrate professionalism and care in protecting Tennessee's natural resources, and at the same time, establish a more efficient model of permit processing. To those ends, we request that you exercise your right to withdraw the now-inaccurate August 2003 certification which permits the destruction of the Sutherland Swamp, cease action on NRS #04.420, and require the TDOT to submit a new and complete application.

We ask that you direct TDEC staff to begin the process of evaluating Sutherland Swamp's potential for Tier II status, and that you postpone any further public meetings regarding new or supplemental certification of the TDOT project until this status has been determined. Only when these steps have been taken should TDOT be allowed to initiate a new request for certification, and that request should cover all of the impacts to the Sutherland Swamp complex instead of a few pieces at a time. Because of the existence of a feasible alternative route further upland that will avoid impacts to the Swamp, there is an opportunity for a win-win solution to this problem.

We thank you for considering our comments, and look forward to working with you to protect Tennessee's water quality and aquatic habitat. Please do not hesitate to contact us if you have questions about our concerns or the Sutherland Swamp. We would be happy to arrange a visit to the Swamp for you if you are interested.

Sincerely,



Rachel S. Doughty

---

<sup>40</sup> Tenn. Code Ann. § 69-3-102.

**Draper, Harold M.**

---

**From:** Steven Brooks [Steven.Brooks@state.tn.us]  
**Sent:** Wednesday, June 08, 2005 1:44 PM  
**To:** Draper, Harold M.  
**Subject:** state route 91 relocation

Option D seems to protect the streams and wetlands better than most other options and still provide some real benefit for traffic concerns.

Whatever is selected, the erosion controls must be as stringent as possible. Even with perfect plans, the execution of those plans often leaves much to be desired. TDOT is infamous for allowing road projects to erode and pollute streams for months and sometimes even years at a time. No matter what is selected, if it is near a stream, then the automatic assumption should be that the stream WILL be damaged. There is no way around it.

Steve Brooks  
TN Dept. of Environment & Conservation  
Division of Water Pollution Control  
(865) 594-5583  
[steven.brooks@state.tn.us](mailto:steven.brooks@state.tn.us)

07/05/2005

051890162  
ID# 051892687

EA-Administrative Record  
Public Comment  
TN 91-Mountain City Bypass  
2003-85

**Draper, Harold M.**

**From:** Dale Carter [dcarter@preferred.com]  
**Sent:** Thursday, June 16, 2005 1:46 PM  
**To:** Draper, Harold M.  
**Subject:** Mountain City By-pass

First, let us introduce ourselves. We are Bonnie and Dale Carter who live at 1059 Johnson Hollow Road. The bypass as originally started parallels our property. We purchased 48 acres in 1988 from Martin Johnson, father of Charles Johnson and brother to Rebecca Reece. We understand that part of our land was in the Johnson Historic District. We built our home in 1989.

The state purchased over 5 1/2 acres of our land with the obligation to provide us with a connection to the bypass. When construction started it became evident that another 2 or 3 acres would be purchased by the state for a drainage area. This sale has not been finalized.

The historic house that is in the center of this controversy sat 30 yards to the right of our driveway. We passed it daily. It was in a state of disrepair. From 1988 to the day it was bulldozed no maintenance was ever done. It had no paint, the porch was falling in and the out buildings and outhouse were collapsing. There would have been no reconstruction possible. We doubt that young Becky or her father Charles ever set foot in it. Mr. Hodges who lived there has sons still living in the country and we are sure they will verify our statements. Mr. Hodges worked for Kermit and Rebecca Reece for years and they told us he was to live there as long as he wished to do so.

When construction started our mailbox was moved to the Reece property. I often stopped to chat with Rebecca. We sat outside and watched the construction of the road on her land. Never did she express any dismay but was instead very interested. On two occasions we drove her up our lane so she could see the activity.

The delay in construction has been frustrating especially since the Johnson's have indicated to others they have no intentions of living on the farm.

We are caught in limbo because we do not have a safe driveway. We support the original plans and do hope this will be your decision. Thank you.

06/16/2005

051890176  
ID# 051892684

Mountain City, Tennessee  
June 14, 2005

RECEIVED  
Environmental Policy and Planning

JUN 22 2005

Doc. Type: EA - Administrative Record  
Index Field: Public Comment  
Project Name: TN 91 Mountain City Bypass  
Project No.: 2003-85

Mr. Jon M. Loney  
Manager  
NEPA Administration  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902-1499

Dear Mr. Loney:

I am delighted to have the opportunity to write in favor of the (SR) 91 bypass around Mountain City, Tennessee. Both the Mountain City Board of Mayor and Aldermen and the Johnson County Commissioners voted in favor of this bypass. My husband and I certainly are for the following reasons:

1. The bypass would save heavy traffic, most especially large trucks off North Church Street which is the only historical part of town still intact. The several beautiful old homes are very close to the street and receive an undue amount of dust and dirt.

2. The quiet street from the high school and middle school feeds onto North Church Street and presents an unnecessary hazard to students; since a bypass is possible, there need not be such a problem.

3. Members of the Community are Making every effort to give a face lift to our town, making it a more attractive, appealing place to visit or in which to live. Routing major traffic around the town would certainly add to this effort. It is the opinion of many that the best way to help the economy of our beautiful but out-of-the-way community is by encouraging tourism and making a pleasant place for retirees.

For the above reasons and many more that I am certain other people have mentioned to you, I strongly support the bypass as it has been on the drawing board from the beginning. I see no advantage in alternate plans.

Sincerely yours,  
Evelyn McQueen Cook

253 N Church St  
Mountain City TN 37683-1325

**James T. Donaldson**  
**P.O. Box 99**  
**Shady Valley, TN 37688-0099**  
**18 May 2005**  
**Comments Regarding Draft EA**

**ENVIRONMENTAL ASSESSMENT**

(File No. 200201957 )

Applicant: Tennessee Department of Transportation  
State Route (SR) 91 Improvements between US 421 and Cold Springs Road (Wills Road)  
Application for Proposed Channel Relocations and Culverts Affecting Wills Branch, Goose Creek,  
Johnson Hollow, Laurel Creek, Drystone Branch and Tributaries to These Streams,  
Johnson County, Tennessee

Jointly Prepared By:  
U.S. ARMY CORPS OF ENGINEERS  
Nashville District, Regulatory Branch  
And  
TENNESSEE VALLEY AUTHORITY

For Further Information Contact:

J. Ruben Hernandez  
Environmental Engineer, Project Manager  
U.S. Army Corps of Engineers  
Regulatory Branch  
3701 Bell Road  
Nashville, Tennessee 37214-2660  
(615) 369-7519

Harold Draper  
NEPA Team Leader  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, Tennessee 37902  
(865) 632-6889

Dear Sirs,

Let me thank you for this opportunity to respond to this draft EA. There are several issues I address in this document. My primary focus is the wetlands along Laurel Creek and Wills Branch on the Sutherland Property.

First, let me express my annoyance with Keven Brown for failing to keep me updated on developments regarding this road project and the wetlands that may be impacted. I specifically asked Keven to let me know what was going on and to keep me advised of any changes in the project status. He has failed in this task, among other tasks.

Keven also failed to keep you apprised of an additional rare plant (Marsh Marigold) found in the wetlands in the spring of 2004, well before your December 17, 2004 site visit (Draft EA, page 4, last paragraph), and well before the November 29, 2004 (Draft EA, page 3, paragraph 1) date for this latest wetlands alteration permit application. Why is this state endangered, globally secure northern species not addressed in this EA, and why has Keven failed to let you know of its presence?. This should be a dynamic process!

Second, it appears that TDOT attempted to pass off my limited botanical survey of the site as having been a complete survey. I became aware of this when Pat Cox called me to find out if I had done the botany work at the site. I was not contracted (or subcontracted) by TDOT to do any of the botanical / ecological work at the site and only became personally involved when I found out how blatantly inadequate their previous site survey was. Thus, my involvement has been a matter of protest against the inadequate work done by TDOT and its ecological contractor who was apparently out of their area of ecological and biological expertise. More rare species are almost certainly located in these wetlands, and it is simply a bad idea to proceed with this project without having complete biological surveys performed for all prominent life forms (mammals, birds, amphibians, reptiles, plants, etc.). I feel that TDOT should pay for these additional surveys to be done by local biologists.

TDOT and their ecological contractor could have done a much better job. TDOT should have contracted a local individual familiar with mountain plants and ecosystems to do the work. Likewise, the ecological contractor should have used local resources to make up for their lack of expertise with mountain plants and ecosystems, as advised in the Corps of Engineers Wetlands Delineation Manual (page 39):

Part IV: Methods

Section B. Preliminary Data Gathering and Synthesis

Data Sources

h. **Local individuals and experts.**

Thank you for considering the entire roadway project the **Area of Potential Effect (APE)** (Draft EA, page 5, paragraph 3).

Thank you for instructing TDOT to consider a new alternate route, **Route I**, in addition to the other routes considered. TDOT should have considered this route on their own initiative. Can this EA be finalized before TDOT does an analysis of this alternate route?

**Bob Sutherland Property (Laurel Creek and Wills Branch Wetlands)**

Bob Sutherland also expressed concern for rare animals, specifically the Bog Turtle, in his letter of 18 November 2003. This should be noted in the top paragraph on page 6 in the draft EA.

Also, the last paragraph on page 6 states "**The road alignment has been designed to minimize stream and wetland impacts on Mr. Sutherland's property.**" This statement has me confused, because I would not be opposed to the road's potential impacts to the wetlands if it had actually been designed to minimize stream and wetland impacts on Mr. Sutherland's property. Moving the route away from the streams is the only way to truly minimize impacts to the wetlands.

**Page 7, 2<sup>nd</sup> full paragraph, last sentence:** should read Laurel **Creek**, not Laurel **Branch**.

**Page 7, 3<sup>rd</sup> full paragraph:** it is impressive that with **15 years of planning** TDOT has still managed to disregard wetland protection laws with their opting to construct the road through wetlands as their preferred alternative.

**Page 10, 3<sup>rd</sup> full paragraph (and mentioned elsewhere):** using the **2:1 mitigation ratio** overlooks the intrinsic rarity of all mountain wetland ecosystems, not just the Appalachian Artesian Calcareous Seepage Fen. A 10:1 mitigation ratio would be more appropriate, while I personally

feel a 100:1 ratio is entirely justified. The 2:1 ratio was proposed in the first wetlands permit before these remarkable wetland communities were given a formal community classification. The mitigation ratio truly needs to be adjusted to reflect the rarity of the wetlands that will be impacted. It is clearly an insult to the significance of these wetlands that the minimal 2:1 ratio has been proposed.

**Page 11, 9<sup>th</sup> point:** “Individuals of Godfrey’s stitchwort located in the Wills Branch wetlands will be transplanted to the Laurel Creek wetland prior to construction (Alternative D only).”

**It should be Godfrey’s Sandwort, not Stitchwort, throughout the report.**

Who will be responsible for transplanting this rare plant species if this alternative is chosen? Will it be TDOT staff or their original ecological contractor, the same folks who failed to properly classify the wetland ecosystems and failed to find any of the **SIX** rare plant species found at the site? Considering their collective past failures, TDOT and their contractor have proven themselves lacking in the expertise required for this task, and it would be entirely appropriate to have another individual do the work. Further, I will challenge the qualifications of anyone that I feel is not up to the job; thus it is a short list of individuals that I feel are qualified for this task.

**Page 11, 4.1 Introduction:** the **ecological description of the area is much too brief.** While much of “this region consists of metamorphic or sedimentary rocks such as sandstone and shale,” the Iron Mountain Range in Carter and Johnson counties is mostly quartzite and gneiss rather than sandstone and shale, while shale is generally limited to the lower mountain slopes and valleys. A good place to start in understanding the overall ecosystems of Johnson County is Frank Barclay’s 1957 Natural Vegetation of Johnson County, Tennessee: past and present.

**Page 12, (x) substrate.** “However, there would be no net channel loss because new channel would be created.” This is a misleading statement. While it may be true that no net channel loss would occur, it does not address the quality of the stream channel that would be created. As Lee A. Barclay, USFWS, wrote in the April 4, 2003 letter:

The replacement of stream functional losses is particularly difficult. We are not aware of any stream creation or restoration project in Tennessee that has resulted in comprehensive replacement of all aquatic resource functions. Tree plantings, properly executed, would only replace one of several stream / riparian habitat parameters. Considering the present level of technology in mitigating stream impacts, we view the creation of “extra on-site mitigation” as infeasible at this point.

His statement could be paraphrased to accurately reflect the current status of mountain wetland ecosystem restoration / replacement (personal observations; I am the contracting botanist monitoring the Shady Valley Wetlands Mitigation Bank wetlands restoration plots).

**Page 12, (x) substrate.** “Substrate impacts are expected to be relatively minor because of the degraded nature of the streams and mitigation provided.”

Whew, this overlooks the natural integrity remaining along the streams and their restoration potential, while at the same time presuming that the proposed mitigation measures are sufficient and effective, which they are not!

**Page 12 (x) suspended particulates, turbidity.** "Construction of the Alternative D alignment began before permits were applied for... Upon learning of the need to obtain Section 404 and Section 26a permits, construction was halted by TDOT."

The current wording is misleading and implies to me that TDOT was self-regulating. A more accurate explanation is that TDEC's Tina Robinson (Johnson City office Water Pollution Control) was asked to find out if TDOT had permits for the wetlands destruction they were about to carry out, which TDOT did not. Thus TDEC halted the construction.

**Page 13 (x) water quality.**

An aggressive campaign by NRCS could reduce or maybe reverse the trend that has resulted in the proposed 2004 state list of impaired streams that would include portions of Laurel Creek, Waters Branch, Roan Creek, and Campbell Creek. ANY ROAD CONSTRUCTION along these streams would certainly affect their overall quality and contribute to their listing as Impaired Streams.

**Page 14 (x) shore erosion and accretion patterns.** "Therefore, the effects on erosion and accretion patterns would be negligible under either alternative."

See comments above for page 12, (x) substrate.

**Page 14 (x) baseflow and water supply.** "However, spring flow would still emerge from the hillside in the same quantities and at the same location" after being covered with a rock buttress.

I simply do NOT believe this. Dumping tons of rock on a spring will alter its flow to at least some small degree if not a larger noticeable degree. Has TDOT determined / documented the normal rate of water flow from these springs? I request PROOF through an independent assessment, not "TDOT expert opinion," that a rock buttress won't affect the baseflow and water supply, and that the baseline water flow be documented prior to rock buttress construction (if that alternative is chosen) for comparison with the baseflow after rock buttress construction. TDOT has repeatedly demonstrated that its expertise in many areas is severely lacking (e.g. failure to recognize the wetlands as wetlands rather than "braided stream channels," failure to identify any of the rare species found in the wetlands, etc.).

**Page 14 (x) special aquatic sites.**

I applaud your recognition of the Laurel Creek wetland as an "**Appalachian Calcareous Artesian Seepage Fen.**" However, there are still some areas of improvement to be made in this section of the EA. I do NOT feel that

TDOT has made an effort to avoid and minimize impacts to the Laurel Creek wetland through the corridor selection process. TDOT proposes to mitigate the unavoidable permanent wetland impacts of 0.069 acres by debiting 0.14 acres (2:1) ratio from available wetland credits at the Shady Valley Wetland Mitigation Bank in Johnson County.

TDOT has clearly NOT made a real effort to avoid and minimize impacts to the Laurel Creek wetland (or Wills Branch wetlands) or they would have never placed their preferred route where they did, nor would they have failed to adequately consider suitable alternatives. As mentioned further above, it is an insult to the significance of these wetlands that the minimum mitigation ratio of 2:1 has been proposed.

The other **wetlands along Wills Branch** are still globally-rare wetlands and should not be

so readily dismissed. They do not fit in the more common Southern Blue Ridge Beaver Pond Marsh (CEGL008433, G4?) classification, but are currently best classified as Southern Appalachian Herb Bog (Low-Elevation Type, CEGL004156, G1):

the most broadly defined type [in its alliance] represents the least floristically distinctive Southern Appalachian Herb Bog vegetation... This association is broadly defined, yet still encompasses very few occurrences, all of which are small. Additionally, nearly all occurrences are highly threatened by hydrologic alternation, timber harvest on adjacent lands, siltation, and ditching and draining. Probably less than 200 acres total of this association remain. It was naturally very limited in occurrence, and has been further reduced in extent and condition. (NatureServe.org 2005)

Thus, to paraphrase, this Low-Elevation Type of the Southern Appalachian Herb Bog represents the "most common" of the globally-rare wetlands in its alliance, and it is estimated that less than 200 acres of this "most common" wetland type remain in the world. Therefore, filling 1.38 acres of this type along Wills Branch would permanently affect ca. 0.69% of the remaining acres of this community type in the world! Thus cumulative effects to this community type need to be sincerely considered.

It should be noted that there is a very good chance that these wetlands along Wills Branch and Laurel Creek would represent new community type(s) were they to receive adequate formal biological analysis. Thus they probably represent a wetland type that has much less than 200 acres remaining. In any event, they are properly classified as a G1 community. The Stony Creek wetlands (Hunter Bog) would also probably represent a new wetland type if it were adequately analyzed. Alan Weakley concurs with this opinion (email of May 3, 2005, to J. Donaldson, Pat Cox, Claude Bailey, Milo Pyne):

Based on Claude's [Bailey's] species list, oblique aerial photos Jamie emailed me, and a discussion with him about the hydrology of the site, I do concur with Jamie's assessment that the G1 community (Appalachian Calcareous Artesian Seepage Fen) is the best "identification" of the community at the site. BUT, classification of these very rare mountain wetlands is still in an incomplete state, so the really accurate way I would put it is this: The best placement of the site in the existing classification is the G1 community above, though additional classification work might identify it as a newly described wetland, which would also be ranked as G1. In other words, it's a G1, period.

I certainly hope that meaningful protection can be provided this particular wetland. In addition to direct alteration / destruction, hydrologic alteration and sedimentation may also be issues if the road placement is near to the wetland and upslope. Non-alluvial Appalachian wetlands are one of the most imperiled Ecological Systems in the country, and they need all the conservation attention they can get.

-- Alan

Alan Weakley, Curator

University of North Carolina Herbarium (NCU)  
North Carolina Botanical Garden  
University of North Carolina  
CB 3280 / Coker Hall  
Chapel Hill, NC 27599-3280  
919.962.0578  
[weakley@unc.edu](mailto:weakley@unc.edu)

**“Temporary wetland impacts would be mitigated by returning the areas to their original elevations, seeding with native perennial rye grass (*Elymus virginicus*), and mulching.”**

I would like to point out that while *Elymus virginicus* is native to the area, I have not encountered it as an abundant or dominant species in the Mountain City or Shady Valley areas. It would be much better to use a native plant that is already present and abundant in the area, rather than introducing another plant component of dubious seed source origin to these rare wetlands that are already being stressed by a number of introduced and non-native species.

Further, the mulch might be contaminated and could introduce a number of unwanted seeds, pathogens, or pollutants. It would be much better to use geotextile fabrics rather than mulch.

**Page 15, top of page.** “No wetlands have been identified along the Drystone Branch corridor which would be encroached upon by widening the existing SR 91 under Alternative I.”

Considering the consistent, repeated failure of TDOT staff to recognize rare communities and rare species, has anyone who knows the local mountain plants and ecosystems looked at the Drystone Branch corridor or the entire ca. 4.5 mile long road route?

**Page 15, 1<sup>st</sup> paragraph, (x) habitat for fish and other aquatic organisms,** last sentence: “neither alternative would adversely affect the larger streams which contain the primary habitats for aquatic life.”

Once again, here is a misleading statement that implies to me that because the smaller streams are smaller, they are being dismissed as less significant. Small streams make larger streams and all are significant!

**Page 15, 2<sup>nd</sup> paragraph, (x) wildlife habitat.** Another case of over-simplification: “The Iron Mountain Range is an unspoiled and naturally wild area containing hundred-year-old oaks and wild grasses.”

While it is unspoiled and naturally wild, especially considering the more disturbed lands surrounding it, the Iron Mountain area contains dozens of tree species, not just oaks, and hundreds of other herbaceous plants besides grasses. It would be fairer to say something like:

The Iron Mountain Range is an unspoiled and naturally wild area containing hundreds of different plant and animal species and dozens of different natural communities including old-growth forests.

**Page 15, 2<sup>nd</sup> paragraph, (x) wildlife habitat.** “North of the project area, the 20-acre Laurel Creek Nature Conservancy preserve protects a bog similar to the wetlands along the Alternative D corridor.”

Let me point out that TNC does NOT have a formal, legal interest in the wetland where Shingletown Branch joins Laurel Creek ca. 1.8 miles downstream of the Sutherland Wetland

(Gabby Call, TNC, personal communication). I suspect the site will be described as a new wetland community type once it is formally evaluated. It is indeed similar to Sutherland's Laurel Creek Wetland but lacks the obvious artesian hydrology.

It is good to see that you do not consider pastures (or woodlands in the pastures) a rare or significant habitat (last part of the paragraph).

**Page 15 (x) endangered or threatened species.** While it might be the case that no Bog Turtles were found during the 2004 survey by Knoxville Zoo personnel, I think you have made a big leap to the conclusion that "the habitat was not found to be of good quality to sustain the species." Please re-evaluate this final statement.

Are you implying that the habitat is not suitable for Bog Turtles in general, while I feel it is good habitat for Bog Turtles, or are you implying that the habitat is not good enough to sustain a reproducing population of the Bog Turtles, while I feel that it is large enough and of good enough quality to sustain a population of Bog Turtles in the area. By dismissing this habitat as appropriate for Bog Turtles, you not only make it easier for TDOT to have its destructive route approved, but you also compromise the site's integrity for future searches for the Bog Turtle or for consideration as an experimental (re)introduction site.

**Page 15 (x) endangered or threatened species.** This section concerns the rare plants.

These wetlands should be categorically avoided during the road project. If they are not categorically avoided, then TDOT should spent money on qualified experts to do the biological and ecological inventories of the wetlands. The wetlands have only received minimal attention from qualified experts, and a full season of biological exploration of these rare habitats is entirely warranted. AND TDOT SHOULD PAY FOR IT.

Let me point out again that the 5 rare plants TDOT listed on the wetlands permit were found with minimal time and effort by Rick Foster and myself. TDOT and its contractor missed all these species. Additionally, I found the state-endangered Marsh Marigold (*Caltha palustris*) during spring 2004, and TDOT failed to include this species on its most recent wetlands destruction permit, another case of TDOT not providing complete disclosure. Keven Brown is obviously aware of this species at the site, so why is it not included on the permit application?

Again, let me point out that only minimal time and effort were needed by professionals familiar with mountain plants and ecosystems to recognize the significance of the site. It is my professional opinion that additional rare plant and animal species would be found at the site if a thorough survey were performed by qualified individuals. Additional rare species likely to be found include *Dryopteris cristata*, *Dryopteris carthusiana*, *Carex ruthii*, *Galium palustre*, *Glyceria laxa*, *Hypericum ellipticum*, *Veronica americana*, *Eriophorum virginicum*, *Triadenum fraseri*, *Sanguisorba canadensis*, Southern Bog Lemming, and Starnose Mole.

**SOME COMMENTS CONCERNING RARE PLANTS FOUND AT THE SITE (pages 15-16).**

It is quite worth noting the global and Tennessee ranges for these species. In Tennessee, most of these rare plants are restricted to the 3 northeast-most counties (Carter, Johnson, and Sullivan). Thus while 5 of the rare plants may be globally secure, they CANNOT be readily considered secure in the state. References: NatureServe.org; University of Tennessee Herbarium website; Tennessee Division of Natural Heritage; personal observations.

**CUMULATIVE IMPACTS** must be addressed for the wetlands and rare species impacted by the SR 91 project along Stony Creek at Hunter Bog: Godfrey's Sandwort, Skunk Cabbage, Marsh Marigold, and Marsh Bellflower.

**Godfrey's Sandwort (*Minuartia godfreyi*)**, G1, is the rarest species found at the site to date. In Tennessee, it is only found in Carter (1 site / population) and Johnson (3 sites / populations) counties. You failed to note that Alabama considers the species Historic (not extant), that South Carolina considers it Extirpated (not extant), and that the remaining four states, Arkansas, Florida, North Carolina, and Tennessee, rank the species as S1, meaning 1-5 populations in the state, or more populations but still considered Critically Imperiled. No state is considered to have a large stable protected population, and habitat destruction is considered the primary reason for its rarity:

The primary threat to this species is habitat destruction; a major roadside renovation could destroy occurrences. *Minuartia godfreyi* is extremely rare throughout its range; the destruction of forests and wetlands and the conversion of natural forests to commercial forests threaten this species (NatureServe.org 2005).

This species' Hunter Bog population was impacted by the SR 91 project along Stony Creek, thus cumulative impacts must be addressed.

**Skunk Cabbage (*Symplocarpus foetidus*)**: state endangered, globally secure. Known from 3 Tennessee counties: Carter, Johnson, and Sullivan, but I do not know if the Sullivan County plants are still extant. This species' Hunter Bog population was impacted by the SR 91 project along Stony Creek, thus cumulative impacts must be addressed.

**Narrow-leaved Meadow Sweet (*Spiraea alba*)**: state-endangered, globally secure. Known from 2 Tennessee counties: Carter and Johnson. However, the Carter County record is on the Johnson County line on Cross Mountain, at the southern end of Shady Valley. Thus all known Tennessee occurrences are in the Shady Valley and Mountain City area.

**Branching-Bur-reed (*Sparganium androcladum*)**: state-endangered, globally secure. Known from 3 Tennessee counties: Blount, Carter, and Johnson.

**Marsh Bellflower (*Campanula aparinoides*)**: state threatened proposed special concern, globally secure. Known from 8 Tennessee counties, making it the "most common" Tennessee rare plant found in the wetlands so far. This species' Hunter Bog population was impacted by the SR 91 project along Stony Creek, thus cumulative impacts must be addressed.

**Marsh Marigold (*Caltha palustris*)**: state endangered, globally secure. Known from 3 Tennessee counties: Carter, Johnson, and Greene. Why is this species not included on the new wetlands destruction permit? It should be addressed during the permit process. This species' Hunter Bog population was impacted by the SR 91 project along Stony Creek, thus cumulative impacts must be addressed.

**Page 16, 1<sup>st</sup> full paragraph.** See comments further above regarding my concerns over the qualifications of the individuals who would transplant Godfrey's Sandwort. Why aren't the other rare species being considered for transplanting out of the road route? Considering their rarity in the state they are certainly worth moving if they are within the final approved route.

I still feel that the Wills Branch wetlands can be avoided (excepting the need to cross Wills Branch a single time) by moving the route upslope.

**Page 16, 2<sup>nd</sup> full paragraph, next to last sentence:** “Because only a few individuals of the population would be affected and the center of the population in the wetlands would not be affected, any impacts from the roadway project on these species would be insignificant.” I completely disagree: any loss of these species’ globally rare habitats will necessarily threaten and limit the amount of available habitat present for them in the future.

**Page 16, 2<sup>nd</sup> full paragraph, next to last sentence:** “The above rare wetland plants have not been identified within the Drystone Branch area and would not be affected by construction within the Alternative I corridor.” Who looked for the species and habitats, the same people who failed to recognize them along Wills Branch and Laurel Creek? What assurance do I have that the survey was adequately performed?

**Page 16, 3<sup>rd</sup> full paragraph:** Canada Barberrry (*Berberis canadensis*) is apparently the only rare species that TDOT and its contractor actually found along the route. I suspect this may be due to its already having been known from the area in the Natural Heritage database, rather than having been located due to the personnel qualifications. Why weren’t individuals of this rare species transplanted out the route?

**Page 17, (x) recreation:** “Laurel Creek is considered by the Tennessee Rivers Assessment Report as being excellent for recreational fishing. Its natural and scenic qualities are considered by the same report to be of regional significance.” Glad to see that Laurel Creek’s value is recognized.

**Page 17, (x) navigation:** “Lower portions of Laurel and Roan Creek may be large enough to support canoeing, rafting, or kayaking. There is considerable whitewater, and no known recreational uses of the streams for these purposes.”

Just to let you know that canoeing and kayaking DO take place at least along the lower part of Laurel Creek in the vicinity of Camp Ahistadi and downstream.

**Page 19, (x) socioeconomics.** Do you mean to say Mountain City (not Johnson City) in the second line of this paragraph had 2383 residents during the 2000 census?

**Page 19, (x) consideration of private property.** “TDOT concluded the highway right-of-way acquisition phase prior to applying for permits for the Alternative D route.” This implies to me that TDOT had already decided on and committed to this environmentally and historically destructive route, and that permits were an afterthought. This implies to me that environmental and historical impacts were not a primary consideration during the planning phase, but instead project cost and ease of construction were the driving force in this project. It should be the other way around.

**Page 19-20, (x) floodplain value.** “Minimization occurs by perpendicular crossings and other techniques along Laurel Creek and Goose Creek.” I find no evidence that TDOT has considered these techniques for the Wills Branch part of the route at least for Alternative D. Instead, TDOT has opted to destroy the floodplain, wetlands, and rechannelize the stream rather than minimize impacts by using a perpendicular crossing.

**Page 20, 4.5 Cumulative and Secondary Impacts.** “Because of the small human population and low intensity of land use in the Johnson County area, terrestrial and aquatic resources are in good condition in the project area.” This statement seems at odds with other statements in the draft EA that dismiss the quality of the streams and wetlands in the Mountain City lowlands. Can you reconcile this?

**Page 20, Route 91 improvements.** “The state of Tennessee has constructed upgrades to State Route 91 in the Stony Creek area of Carter County. According to a commenter, wetlands impacts to Hunter Bog occurred from this project.”

Yes they did – I am that commenter. You could pull up the file and find out how much wetlands were permanently destroyed. Like all of our mountain wetlands, the Hunter Bog is globally rare and shares many of the same species as found at the Laurel Creek Wetland (e.g. Godfrey’s Sandwort, Marsh Bellflower, Marsh Marigold, Skunk Cabbage). Cumulative impacts to these wetlands and rare species must be addressed.

**Page 20, last paragraph.**

There are no rare or unique terrestrial or aquatic habitats that would be cumulative [cumulatively?] impacted by these proposals [sentence 1]. With the exception of Godfrey’s stitchwort, the state-listed rare plants are considered globally secure or apparently secure by the network of heritage databases (<http://www.natureserve.org/explorer/>) [sentence 2]. The plants are state-listed in Tennessee because they are at the edge of their range [sentence 3]. In general, the plants are more abundant elsewhere, especially further north [sentence 4]. Godfrey’s stitchwort is also found elsewhere in the area [sentence 5]. The US 58, US 421, and Route 91 projects have not and are not expected to adversely affect the wetland habitats harboring these plants [sentence 6]. Taken together, these proposals have minimal potential to cumulatively affect the terrestrial and aquatic resources of the Mountain City lowland area [sentence 7]. No resource is likely to be stressed to the point of no return, and these projects would not add to any adverse effect on resources that are occurring in the Mountain City lowland area [sentence 8].

**Sentence 1:** I think I have already disproved this statement, ALL of the wetlands along the route are globally rare. With <200 estimated acres in the world remaining in the most broadly defined wetland type, the Southern Appalachian Herb Bog (Low-Elevation Type), I do not see how you can say that there will not be cumulative impacts.

**Sentence 2:** While the rare plants, excluding Godfrey’s Sandwort, are globally secure, they are NOT considered secure in the state with the possible exception of Marsh Bellwort. Thus the other 4 rare plants known from Laurel Creek and Wills Branch have yet to be demonstrated as having secure, protected, self-sustaining populations elsewhere in the state. This should be kept in mind, along with the fact that the Tennessee populations may differ significantly at the genetic level from the populations found further north. All populations and colonies of these rare species should be considered necessary for the long term survival of their metapopulations in Tennessee.

**Sentence 5:** The other 3 of Tennessee’s Godfrey’s Sandwort colonies / populations, or at least the habitat where they are found, have been at least historically (or more recently) impacted by road

projects: Doe Branch (roadside, but I am not very familiar with this site but will be visiting it soon), Stony Creek Hunter Bog (SR 91, I am familiar with this site), and Shingletown Bog (SR 91, I am familiar with this site). **The Sutherland Wetland Godfrey's Sandwort population is the only Tennessee population that is NOT currently roadside or very close to a road.** Thus cumulative impacts to Godfrey's Sandwort and its habitat(s) in the state must be taken into consideration rather than seemingly dismissed out of hand. Hunter Bog was a small site to begin with and now it is even smaller with less available habitat for the rare species than before the most recent "upgrades" to SR 91 in the area.

**Sentence 6:** While I can't speak much to the effects of US 58 and US 421 projects, the SR 91 project has certainly adversely affected the wetland habitats harboring these plants at least at Hunter Bog in the recent past, as well as at the Shingletown Branch site, but less recently.

**Sentence 7:** I feel this sentence is simply wrong considering the intrinsic rarity of mountain wetlands in general, and more specifically those listed in this document / letter, as well as the previous impacts to the wetlands and rare species at Hunter Bog along SR 91 as well as other impacts to the other Godfrey's Sandwort colonies. Perhaps I misunderstand your use of the phrase "minimal potential to cumulatively affect the terrestrial and aquatic resources of the Mountain City lowland area."

**Sentence 8:** It remains to be seen if the SR 91 Stony Creek project stressed the Hunter Bog "to the point of no return."

#### Alfred Johnson Farm

I am appalled by the blatant disregard for the historic Alfred Johnson Farm, not only in terms of historic structures and features and their destruction, but also for the extreme amount of erosion and siltation that took place. It is unethical, completely unacceptable, should be remediated, and the route should be altered. They should be given concurring status, not consulting status.

#### Comments on Public Notice No. 03-10.

Page 3, last paragraph.

A Tennessee Department of Environment and Conservation (TDEC) database search performed on March 15, 2002, produced the following listing of state plant species: state endangered Skunk Cabbage (*Symplocarpus foetidus*) and state threatened Crested shield-fern (*Dryopteris cristata*). The database search concluded that recent field studies confirmed the absence of these plant species within the project right-of-way. Therefore, no affect is anticipated to these species. 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.

How about that, there was even reason to believe that 2 rare wetland species would be in the area, and one of them even turned out to be locally abundant (Skunk Cabbage), but TDOT and its contractor still failed to find it, not to mention the other rare species at the site, with the end result that the phrase "Based on available information" could easily be replaced with "insufficient information," or "inadequate information provided by unqualified surveyors."

I would very much like to know where the nearby Skunk Cabbage and Crested Shield-fern records are. Do you have EO numbers that I can cross reference with Tennessee Heritage? The closest records to the Sutherland Wetlands that I know of for these 2 species is the Shingletown Branch Wetland along Laurel Creek which also contains Godfrey's Sandwort and Marsh Bedstraw (*Galium palustre*). If the Shingletown Branch Wetland is the source of the nearby Skunk Cabbage and Crested Shield-fern records, then why aren't the other rare species at this site considered during the permitting process and in the EA?

### IN CONCLUSION

I request that the August 7, 2003 permit be revoked and that the permit process start over from the beginning. TDOT did not disclose all relevant information for the first permit, and I do not feel that the most recent application was applied for in good faith since there is no mention of Marsh Marigold.

I reserve the right to make additional comments regarding this project and the EA.

Finally, much if not most of this "mess" concerning the wetlands and rare species could have been avoided if TDOT had contracted with me to do the botanical and ecological surveys along the proposed route. It's not too late for that to happen.

Thank you for your time,

Sincerely,

James T. Donaldson  
Botanist and Biological Consultant

051896183  
ID # 051892677

EA-Administrative Record ✓  
Public Comment  
TN 91 Mountain City Bypass  
2003-85

**Draper, Harold M.**

**From:** james [planthunter@charter.net]  
**Sent:** Monday, May 23, 2005 11:34 AM  
**To:** Claude Bailey  
**Cc:** Draper, Harold M.; Joe McGuiness; Cox, Patricia B.  
**Subject:** Doe Creek Minuartia godfreyi

Hi Claude,

I made it out to the Doe Creek Minuartia godfreyi site and found 2 or 3 other rare plants as well (Cardamine rotundifolia, Dryopteris carthusiana, and putative Sparganium androcladum). A combined EO form is attached. It is indeed a large Minuartia colony, high density, but the roadside location puts them at risk even though periodic road maintenance (mowing, etc.) might help maintain the habitat.

So, all 4 Tennessee M. godfreyi records:

- are on private land,
- have no formal protection,
- only the Sutherland Wetland record has not already been directly impacted by road projects, and
- only the Sutherland Wetland record is not currently at risk from routine road maintenance activities.

Cheers, Jamey

06/27/2005

**RARE PLANT SURVEY FORM**  
**I. ELEMENT**

**SNAME:** *Minuartia godfreyi*  
*Cardamine rotundifolia*  
*Dryopteris carthusiana*  
Putative *Sparganium androcladum*

**EOCODE (leave blank):**

**TRANSCRIBER:** J. Donaldson  
**MAPPER:** J. Donaldson  
**FIRSTOBS:** 1997?

**MARGNUM (leave blank):**

**LASTOBS:** 2005-0519

**II. LOCALITY INFORMATION**

**SURVEYSITE:** Doe Creek / Doeville  
**COUNTYCODE:** TNJOHN  
**OWNER:** private  
**MACODE:**  
**COMPARTMENT:** na

**QUADNAME:** Doe  
**LAT:** see below  
**LONG:**  
**PHYSPROV:** Mountains  
**LTA:** ? left blank  
**Subsection:** ? left blank

**DIRECTIONS (include topo map with EO locations):** update for the 1997 EO... all waypoints are N side of hwy 167. Park at the Doe Creek Fishing Access, a short loop road on the S side of hwy 167. The apparent W end of the population, WP365, is ca. 50m W of the W end of the Doe Creek Fishing Access parking. Much of the site is essentially a roadside ditch and therefore at direct risk of impacts...

WP,D,365 , 36.383327944, -81.9588554744,12/31/1989,00:00:00,CRTD 17:17 19-MAY-05  
WP,D,366 , 36.383290393, -81.9584370498,12/31/1989,00:00:00,CRTD 17:20 19-MAY-05  
WP,D,367 , 36.383231384, -81.9578308705,12/31/1989,00:00:00,CRTD 17:26 19-MAY-05  
WP,D,368 , 36.383268935, -81.9580132607,12/31/1989,00:00:00,CRTD 17:28 19-MAY-05

WP365 west end of **M. godfreyi** population at old highway 167 ROW concrete pillar, N side of hwy 167; ca. 15x8m wet area where small tributary reaches highway 167, ca. 20-25m upstream / W side of the hwy 167 culvert for this tributary (100% cover by *Rorippa nasturtium-aquaticum* at the culvert), and west of the woods road. DID NOT SEARCH ANY FURTHER UPSTREAM ALONG THIS TRIBUTARY BECAUSE IT IS PRIVATE LAND, BUT LOOKS LIKE SOME MORE GOOD HABITAT AVAILABLE.

Location for a single **Dryopteris carthusiana** right beside the concrete pillar, ca. 4m<sup>2</sup> **Cardamine rotundifolia** in area (flower and early fruit), and a few **putative Sparganium androcladum** clumps (leaves strongly keeled, but too early to be sure not *S. americanum*). A couple hundred *M. godfreyi* plants, mostly in early bud.

WP366 just to E side of the wood roads that divides this *Minuartia* population, and almost directly opposite the W end of the Doe Creek Fishing Access Parking loop.

WP367 opposite the SW corner of the private land yard, several dozen clumps of **putative Sparganium androcladum**. DID NOT SEARCH FURTHER E OF THIS WAYPOINT. DID NOT SEE ANY *M. GODFREYI* AT THIS WAYPOINT.

WP368 E-most **M. godfreyi** that I saw, to W of WP367.

**Time & Effort:** ca. 30 minutes at site with *Minuartia godfreyi*. Searched N roadside to W out to hwy 67, ca. 45 minutes. DID NOT SEARCH EAST OF WP367.

**III. EODATA (biological information)**

**PHENOLOGY:**

*M. godfreyi*: vegetative, a few flowering, most still in bud  
*C. rotundifolia*: ca. 10m<sup>2</sup> total, flower and fruit  
*D. carthusiana*: one vegetative plant  
Putative *Sparganium androcladum*: plants still emerging, ca. 70 clumps minimum estimate

**APPROX. #:**

- M. godfreyi: estimated >500 stems, apparently the highest density of TN's 4 occurrences.
- C. rotundifolia: ca. 10m<sup>2</sup> total
- D. carthusiana: one vegetative plant
- Putative Sparganium androcladum: plants still emerging, ca. 70 clumps minimum estimate

**POPULATION AREA (m<sup>2</sup>):** FULL EXTENT NOT DETERMINED, BUT overall site described above is ca. 70 x 5-10m = ca. 400-700m<sup>2</sup>

**VIGOR:**

- M. godfreyi: normal and very good
- C. rotundifolia: normal
- D. carthusiana: normal
- Putative Sparganium androcladum: normal

**Type of reproduction:**

- M. godfreyi: sexual
- C. rotundifolia: sexual
- D. carthusiana: one vegetative plant
- Putative Sparganium androcladum: unknown

**Evidence of disease or predation:**

- M. godfreyi: none
- C. rotundifolia: none
- D. carthusiana: plant has insect or animal browse, ca. 25%
- Putative Sparganium androcladum: none

**Seedling recruitment:**

- M. godfreyi: apparently yes
- C. rotundifolia: apparently yes
- D. carthusiana: unknown
- Putative Sparganium androcladum: unknown

**Population health and quality:**

- M. godfreyi: good, lot of plants, but roadside location on private land puts them at risk
- C. rotundifolia: good
- D. carthusiana: poor, just one plant found so far
- Putative Sparganium androcladum: good

#### IV. HABITAT

**COMMENTS:**

**Ecosystem:** wetland - aquatic

**Ecological Community (TNC Approximation) or USFS Forest Type:**

**Associated species:** Acer rubrum, Tsuga canadensis, Betula lenta, Sambucus canadensis, Prunus serotina, Platanus occidentalis, Alnus serrulata, Rosa palustris, Lindera benzoin, Rhododendron maximum, Cornus amomum, Veronica anagallis-aquatica, Vernonia alternifolia, Packera aurea, Galium aparine, Galium sp., Aster puniceus, Impatiens sp., Chrysosplenium americanum, Typha latifolia, Glyceria striata, Carex lurida, C. atlantica, C. vulpinoidea, Carex spp., Juncus effusus,

**INVASIVE EXOTICS:** Polygonum cuspidatum, Lonicera japonica, Rorippa nasturtium-aquaticum, Ranunculus repens, Microstegium vimineum, Osmunda cinnamomea

**HABITAT SUITABLE FOR:** Galium palustre, Caltha palustris, Glyceria laxa...

**Geologic substrate (optional) - examples (limestone, sandstone, alluvium, etc.):** basic geology appears to be shale, maybe some limestone nearby as well.

**GENDESC:**

Aspect: S

Slope (%): 0-10 (very modest, rel. flat)

Light (% canopy cover in 25% increments): 50%

Topo position: lower slope / footslope

Slope config.: concave

Moisture: hydric - saturated

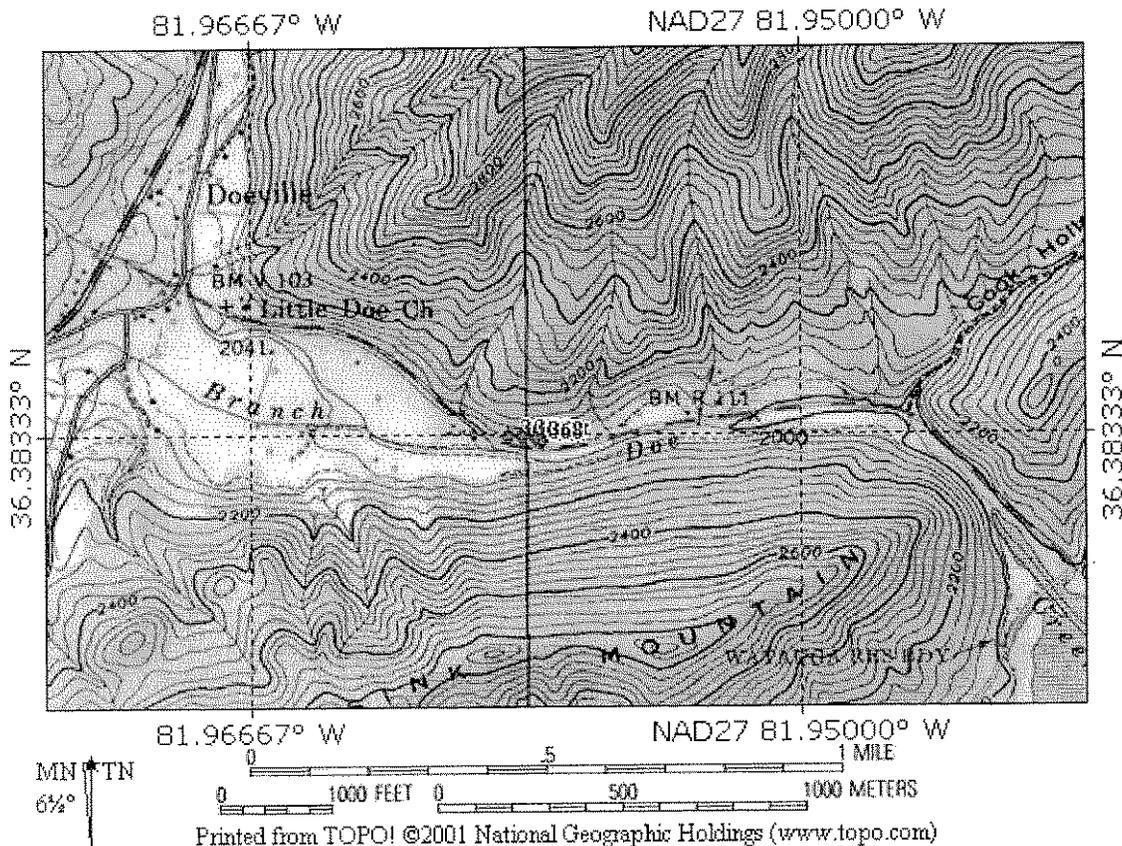
MINELEV (ft.): ca. 2020

MAXELEV (ft.): ca.

**V. IDENTIFICATION****BESTSOURCE:** James T. "Jamey" Donaldson,**Best but Temporary:** 37 Lanvale Avenue, Asheville, NC 28806-2613; 828-216-4869

PO Box 99 [297 A.J. Wright Rd.], Shady Valley, TN 37688-5319; 423-739-5755

Adjunct Curator, John C. Warden Herbarium, ETSU Bio. Dept., P.O. Box 70703, Johnson City, TN 37614

**ALSO?:** See associated report: J. Donaldson. 2004. Botanical survey of the Cherokee National Forest Walnut Mountain Project (1085.3 acres and 2.3 miles of roads). Contract 43-4756-4-0159.**SPECIMEN:** *Minuartia godfreyi* collected, probably for ETSU, have not assigned a number yet.**VI. CONSERVATION****PROTCOM:** need to work with the highway department to make sure that the hydrology is not altered. Contact land owner(s) and get permission to look just upstream of WP365 along the tributary. Search further to E along highway...**MGMTCOM:**

First  
Tennessee  
Development  
District

0516 70699

ID# 051671793

2003-55



207 North Boone Street, Suite 800 • Johnson City, Tennessee 37604  
(423) 928-0224 • FAX: (423) 928-5209

RECEIVED

Environmental Policy and Planning

May 27, 2005

MAY 31 2005

Doc. Type: EA-Administrative Record  
Index Field: Agency Comment  
Project Name: TN 91-Mountain City  
Project No.: 2003-55

**Carter**  
Executive Director  
Washington

**Greene**  
Executive Director  
Washington

**Hancock**  
Executive Director  
Washington

**Hawkins**  
Executive Director  
Washington

**Johnson**  
Executive Director  
Washington

**Sullivan**  
Executive Director  
Washington

**Unicoi**  
Executive Director  
Washington

**Washington**  
Executive Director  
Washington

Mr. Jon M. Loney  
NEPA Administration  
Environmental Policy and Planning  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902

**Subject: Environmental Assessment of State Route 91 Improvements  
Between US 421 and Cold Spring Road  
Johnson County, Tennessee**

Dear Mr. Loney,

The First Tennessee Development District has reviewed the information on the subject improvements to State Route 91. As a result of the review, it has been determined that the proposed project is in accord with regional and local plans, programs and objectives as of this date.

If our office can be of further assistance, please contact me.

Sincerely,

Susan Reid  
Executive Director

cc: Mountain City Mayor Harvey Burniston  
Johnson County Mayor Dick Grayson  
Ken Rea, Director of Economic &  
Community Development, FTDD

/thh



**Draper, Harold M.**

---

**From:** Dick Grayson [coexec@earthlink.net]  
**Sent:** Tuesday, June 14, 2005 12:50 PM  
**To:** Draper, Harold M.  
**Subject:** Mountain City Bypass

Mr. Draper,

I am getting many calls and inquires in this office about the status of the proposed bi-pass in question. Needless to say I cannot answer any questions as I have no firm answers.

I would greatly appreciate your agency taking an active lead in seeing this project move forward. The completion of this project would greatly improve the traffic flow around Mountain City and would also improve the safety of folks traveling within the town limits.

I am not sure what permitting issues you are looking into but it appears something should develop that would allow the construction to continue. I urge TVA to take the lead in moving this project along.

Thank you

Dick Grayson  
Johnson County Mayor  
222 W main Street  
Mountain City, Tn37683

**Draper, Harold M.**

---

**From:** Minnie Miller [millerm@k12tn.net]  
**Sent:** Tuesday, June 14, 2005 11:49 AM  
**To:** Draper, Harold M.  
**Subject:** Mountain City Bypass

Dear Mr. Draper,

I appreciate the opportunity to comment on the proposed bypass for Mountain City. The proposed bypass will alleviate much of the traffic, particularly large truck traffic, on North Church Street in Mountain City. My comments have to do with improving the safety of our students and staff as they enter and exit Johnson County High School and Johnson County Middle School. Access to both schools is from North Church Street and on a curve making it very difficult to see oncoming traffic.

I can appreciate history and environmental issues; however, I feel that they pale in comparison to the safety of children or adults. The bypass issue has been stalled long enough. It is time for a decision to be made and the construction to continue. North Church Street is a city street trying to handle all the city traffic, the truck traffic for Hwy 91 and 421, and the school traffic for two fairly large schools. The two schools serve 1250 students and 100+ employees. Please visualize school buses mixed in with parent traffic and teenage drivers trying to enter and exit on a street already busy with large trucks and other traffic.

I am appealing to you to do whatever is needed to get this project going again and as quickly as possible. Ms. Rebecca Johnson Reece, the former owner of the Johnson farm, was an outstanding teacher in our school system for many years. I feel, if she were here today, she would put the safety of children above any other issue.

Once again, thank you for the opportunity to comment.

Respectfully,  
Minnie Miller  
Director of Schools  
Johnson County



ID# 051892679  
051890212 ✓

# League of Women Voters of Watauga

P.O. Box 536 • Mountain Home, Tennessee 37684-0536

June 15, 2005

Mr. Harold Draper  
NEPA Team Leader, TVA  
400 W Summit Hill Drive  
Knoxville, TN 37902

EA-Administrative Record  
Public Comment  
TN 91 Mountain City Bypass  
2003-85

**Re: State Route 91 Improvements in Johnson County  
Sutherland Wetland**

Dear Mr. Draper:

We have become aware of your recent issuance of an Environmental Assessment (EA), with the US Army Corps of Engineers, for the above referenced project. The League of Women Voters of Watauga has communicated several times, in writing or through oral contacts, with both the state's water and transportation agencies regarding this project. We are submitting the comments, below for your consideration in determinations and final decisions on this project.

We are pleased to note that an expanded list of alternatives has been evaluated. The League had previously urged that modification of the TDOT-initiated route--through moving a short segment up-slope to avoid the important wetlands on the Sutherland property--be considered. The new, expanded list contains a Ridgeline-Route 91 option, Alternative I, which appears would accomplish this. We **strongly support**, therefore, **Alternative I** and hope that it will be implemented.

We thank the joint agencies (USACE and TVA) for having performed the additional analyses and expanded project-area review that led to identification of this new option. Some reasons for our recommendation that the new, Alternative I be chosen are as follows:

1. It meets the legitimate objective of traffic mitigation from increasing, I-81 overflow which officials and citizens in Johnson County are seeking. It does so, as stated on page 9, without additional cost, being "similar in cost to [Alternative] D." With a cost differential absent (or at most minor), any economic objection for moving the road segment in question up-slope is removed.

We note that this was also the wish expressed in writing to the permitting agencies, as stated on p. 5, by Mr. Sutherland himself.

2. As we had argued in earlier letters, the State of Tennessee has an overriding interest in maintaining rare biological resources such as the wetland communities along Laurel Creek and its Wills Branch tributary. These wetlands being of unsurpassed rarity and value, with less than a handful existing globally and perhaps only one other in Tennessee (Shady Valley), their protection is a predominant need. The EA has determined the economic feasibility of project alteration that will protect them.

3. A mere, formula-based, minimal mitigation proposal through a 2:1 acreage addition to the other existing wetland of this type, in Shady Valley, was unrealistic in expectation of adequate compensation. A "holocaust event" such as E. O. Wilson describes as major species-extinction cause can easily befall a singular habitat site.

Even if some of the threatened plants could have been successfully relocated, the prospects for preservation of the State's valuable natural heritage are immeasurably advanced if there is more than just one remaining, biologically still well functioning site.

We are happy, therefore to note the EA finding that "wetland and stream impacts," which would occur under the previously proposed Alternative D are not among project disadvantages that would accrue under Alternative I (pp. 8, 9). Again, we urge the Agencies to choose the latter alternative.

4. We agree with concerns which had been raised by the US Fish and Wildlife Service about the earlier-proposed stream encapsulation for Wills Branch, to be mitigated by tree planting. We believe that such alteration and the loss of its natural riparian area would substantially, negatively affect ability of this stream to fully maintain its wetlands and their water-filtering, habitat and other ecological functions. A row of trees does not make up for these. The Wills Branch wetland, though not as unique as the fen-wetland on Laurel Creek downstream, are yet quite rare in Tennessee (and even in the world). Alternative I would avoid the very undesirable impacts would occur under Alternative D.

5. We have concerns, likewise, about the covering of springs in the main, Laurel-Creek wetland, which Alternative D envisions. This action, proposed as per the January 19, 2005 public notice, would be in addition to the fill and other impacts to the main wetland which had already been authorized by the permit issued in August 2003 (p. 3). Absent actual base-rate data from rock-buttress covering of springs that are comparable in hydro-geologic aspects, we doubt the assertion of equal water flow to the wetland, following rock covering. More importantly, such seeps and springs have great importance, in addition to water provision, in the food web and life cycle and life space for many wildlife species. The prospects for aquatic invertebrates, amphibians, birds and other wetland dependent animals are likely to be harmed by conversion to clean rock piles of the natural springs that constitute and support their current habitat. We appreciate that an option for avoiding this action now exists, in Alternative I.

6. We were aware, from documents in the regional (Johnson City) field office of the Tennessee Department of Environment and Conservation, of extensive erosion and sedimentation problems which had already occurred in the earlier, construction phase of this project. While we believe that the full intent and effort of all the agencies involved, including TDOT, is to seek to "maintain a strict erosion and sediment control program" for the project (p. 11) it is clear that modifying the project through choice of the up-slope segment would provide far better guarantee of avoiding sedimentation damage--and even potential littering damage later on--for the Sutherland wetland.

Again, we thank the Agencies for undertaking the additional assessment and identifying additional project alternatives. Again, also, we express our strong preference for Alternative I which, while fulfilling the road-expansion goal sought in the project does so at equal cost as the previously permitted alternative (D) but avoids most destructive impacts to precious and rare wetland resources.

We urge that Alternative I be implemented in the final permit decisions.

Thank you for considering comments from the League of Women Voters.

Sincerely,



Cathy Riddle, President, League of Women Voters of Watauga

C: J. Ruben Hernandez, US Army Corps of Engineers

051890204  
ID # 051892682

Mr. Jon M. Loney  
Mgt, NEPA adm  
TVA  
400 W. Summit Hill Dr.  
Knoxville, TN 37903

June 15, 2005

RECEIVED  
Environmental Policy and Planning

JUN 22 2005

Doc. Type: EA-Administrative Record  
Index Field: Public Comment  
Project Name: TN 91- Mountain City Bypass  
Project No.: 2003-85

Dear Sir:

I am offering some comments regarding the 921/91 Road By-Pass to Mountain City, TN the County seat of Johnson County. It would be a shame to stop building this By-Pass. The State of Tenn. has already spent thousands of dollars on the project. Several families had to be relocated due to this road Rite away.

Rebecca Johnson, the owner of land sold to the State for this road. This land / Rite-away in question was not bought nor did the complianate home Jones of attorney over this property at the time Rebecca sold it. Ms Rebecca Johnson did not reject or take issues to selling her land for the by-Pass Road. This

road is located on the upper end of her property approx 1/4 to 1/2 mile from her house and other building. It would offer very little or no noise or lights from Camp trucks at night on their house. The by-Pass road bed has already been cut through their property. By allowing the road to be completed it would require no further bulldozing of new land for the road bed.

The proposed by-Pass route offered by the Johnson Family would, if approved, delay the building of this road. It would require the purchasing of more land for this route. Several more families would have to be relocated which does not make good sense.

The 4.21/91 By-Pass should be completed for the following reasons:  
all Commercial trucks including gravel

trucks, log trucks go through Dan  
Tang Mountain City. The streets are  
used by student/children going  
to either the middle or high school.  
This creates a very bad safety  
problem for the children that walk  
or drive personal cars to school.  
Business that require customer visits  
are located on these streets. General  
homes are also located on these streets.  
Stop and go traffic and bad/cross  
intersections do not support  
safety for children, shopper,  
residents and local car traffic.

The truckers use Jake brakes  
at night as well as other times  
that rattle/shake house windows  
from the extremely loud noise.

The high volume of truck traffic  
leaves an accumulation of dust  
on porches and mail boxes.

There is also a problem with trucks  
exceeding the posted speed limit.

The new By-Pass would also improve the operations, safety and driving times for truckers and support better gas mileage.

The State of Tennessee had a Public Hearing on the proposed Bypass in Johnson County. Three sites for the By-Pass were reviewed and the most popular route was the one going across the Johnson Keller. The County Commissioners and City Government, each submitted a Resolution recommending that this route be used for the By-Pass.

The State should go forward ASAP, in building the road as originally planned. Land was purchased for the owner and not her Power of Attorney for the By-Pass.

Lloyd W. McEwen  
324 N. Church St  
Mtn City, TN 37685

HARVEY BURNISTON, SR.  
Mayor  
(423) 727-2940

TERRY G. REECE  
City Recorder  
(423) 727-2916

051670689  
ID# 051671794



210 SOUTH CHURCH STREET  
MOUNTAIN CITY, TENNESSEE 37683  
TELEPHONE (423) 727-8005 • FAX (423) 727-2925

2003-85

Aldermen  
PAUL GOBBLE  
KEVIN PARSONS  
BOB MORRISON  
WILLIS WALKER

RECEIVED

Environmental Policy and Planning

June 6, 2005

JUN 08 2005

Doc. Type: EA-Administrative Record  
Index Field: Agency Comment  
Project Name: TN 91-Mountain City  
Project No.: 2003-85

Mr. Jon M. Loney  
Manager  
NEPA Administration  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902-1499

Re: Environmental Assessment Letter Dated  
May 23, 2005 (SR) 91 Improvements

Dear Mr. Loney,

Per your request I have read the data in your document along with your draft May / 2005 MOA and the stipulations as well relative to the (SR) 91 improvements.

I believe the MOA to be fair to all parties and concur with the stipulations also. Obviously, the Town of Mountain City needs and wants this road to be constructed and do not offer a view relative to the different route options you considered; we need the road badly in Johnson County, Mountain City, Tennessee and want this delay resolved quickly so construction can begin again.

Please call me at 423-727-2940 or City Recorder Terry G. Reece at 423-727-8005 should you need further information or desire to further discuss.

Sincerely,

Harvey Burniston  
Mayor

HB/db

cc: Board of Mayor and Aldermen  
(SR) 91 File Copy - Construction

534 N. Church St.  
Mountain City, Tenn. 37683  
June 26, 2005

Mr. Harold Draper  
Tenn. Valley Authority  
400 West Summit Hill Dr.  
Knoxville, Tenn. 37902

Mr. Draper,

I am writing you in regard to the Highway 91 Bypass project.

I live one block from the entrance of Johnson County High School on 91 which is the main highway leaving Mountain City. At the school entrance there is a deep curve which is extremely dangerous. There is no traffic light which makes it almost impossible for traffic to move. Lots of semi-trailers, gravel trucks, Busses and regular traffic are often backed up all the way to the middle of town. This causes a bottle effect plus all the smog from the vehicles. The noise from all the large trucks is very disturbing when at 2:00 in the morning they awaken you.

Mr. Draper, for the safety, convenience

and growth of Mountain City, I am asking  
you to help the good people of Mountain  
City to get our funding or what ever  
it takes to obtain our most needed Hwy 91  
By-pass.

Respectfully,  
James D. Mellina

051890214  
ID # 051892810

507 Fox Hollow Road  
Mountain City, TN 37683

June 15, 2005

RECEIVED

Environmental Policy and Planning

Mr. Jon M. Loney, Manager  
NEPA Administration, TVA  
400 West Summit Hill Drive  
Knoxville, TN 37902-1499

JUN 22 2005

Doc. Type: EA-Administrative Record  
Index Field: Public Comment  
Project Name: TN 91 Mountain City Bypass  
Project No.: 2003-85

Re: Improvements between roads SR 91 and US 421 in Johnson  
County, Tennessee

Dear Mr. Loney

It concerns me, as a private citizen, that plans have been made and approved, property has been purchased at the expense of our taxpayers, houses have been relocated at the reluctance of homeowners, and work is being delayed on the construction of the by-pass around Mountain City, Tennessee.

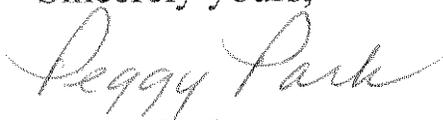
We are a small community and are located remotely away from the more powerful cities, which receive tax dollars and approval of projects seemingly at the beacon call of their influential leaders. Ours is a valuable community, and our tax dollars contribute to the economic stability of our state. Our needs are as great, if not greater, than those with louder voices.

The route, as it is, brings huge eighteen-wheelers directly into the narrow streets of downtown. Traffic has to come to a complete stop for the large vehicles to make left or right turns. They pass dangerously close to our public schools and public facilities where children and adults are trying to walk to the library, community center and senior citizens center.

We recognize the need for the over-sized traffic to travel to their destinations, however, presently it is a hazardous journey for the residence and visitors of our town. It is my concern that in time we will see a child hurt or even killed in our downtown area because this construction has not been finished.

Please give this project you careful attention and consider the value of the safety of our citizens.

Sincerely yours,

A handwritten signature in cursive script that reads "Peggy Park". The signature is written in black ink and is positioned above the printed name.

Peggy Park

051890215  
ID # 051892811

RIDGEVIEW LLC

RECEIVED  
Environmental Policy and Planning

June 20, 2005

JUN 23 2005

Mr. Jon M. Loney, Manager  
NEPA Administration  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902-1499

Doc. Type: EA - Administrative Record  
Index Field: Public Comment  
Project Name: TN 91-Mountain City Bypass  
Project No.: 2003-85

Re: Improvements between Roads SR91 and US 421 in Johnson County, TN

Dear Mr. Loney:

During May 2002, we bought the Johnson property from Mary Ann Adams on Johnson Hollow Road for the purpose of building an upscale, gated housing development. Construction is nearly complete and we now find out that subject road is in danger of not intersecting on the back side of our property.

One of the main attractions of the property was that the 10 acres on the backside would have access via the proposed road. This is now in jeopardy with current discussions regarding rerouting of proposed improvements. This concerns us greatly as the only access to those 10 acres would be very costly to us.

As residents of Johnson County and Tennessee, it also concerns us that a great deal of our tax money has been spent on the new road to date. It is our understanding that the monies already paid would be wasted if an alternative route is adapted.

From reading the documents you have provided to Mr. Burniston, Mayor of Mountain City, it appears that the TVA has done its home work on the historic site issue and that the road should be completed as originally planned.

Sincerely,



H.G.M. Sijthoff, General Partner



Karen L. White-Sijthoff, General Partner

cc: Mr. Harvey Burniston, Mayor

051890226  
ID # 051892808

June 21 ✓

EA-Administrative Record  
Public Comment  
TN 91-Mountain City Bypass  
2003-85

Mr. Draper,

Thank you so much for sending us the materials, maps, etc.

We had some degree of difficulty trying to determine in some cases whether individual properties, farms and homes were in the Mills Historic District or adjacent to it or perhaps both.

We did however, as Millises, want to go on the record as speaking up on behalf of the project. We hope this letter is of some benefit to the cause.

Sincerely,  
Nancy Shorn

P.O. Box 600  
Mountain City, TN 37683  
June 20, 2005

Mr. Harold Draper  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902

Mr. Draper:

We, the undersigned, are Wills descendents who presently reside within the Wills Historic District of Johnson County and are property owners and/or have current interests. We would like to clarify our position on the Highway 91 by-pass project.

We have driven by (many of us on a daily basis) and have looked at the partially completed project for many months now. We have friends and family (on the Mountain City end of the project) who have had to vacate their homes and relocate in order to make room for the road. We have been hoping to be able to travel north out of Mountain City in the morning and mid-afternoon without being delayed or stopped due to the hazardous, heavy school traffic.

We have been anticipating easier access to our family cemetery, the Wills Cemetery, which sits atop a steep hill one-quarter of a mile from the present Highway 91. (The north end of the by-pass was planned to come within yards of the cemetery.) We are also well aware of the considerable time, effort, and money that have already been invested in this project.

We have found the delays in the project to be disheartening and we look forward to the completion of the Highway 91 bypass in accordance with the original plans - ending in the area of Silverlake Market and the intersection of the present Highway 91 and Cold Springs Road.

We have no intentions of hindering the road project in any way or to impede the progress. We do, however, have one concern, which we should perhaps give voice to at this time; we would like to be given adequate and reasonable access to any of our properties and interests (such as cemetery, businesses and farm acreage) which the road would travel through or by.

Those of us who reside here in Johnson County would certainly be pleased to see a new, better road as soon as possible, not only for our use, but for all Johnson Countians and anyone else traveling through our county. We welcome progress.

Respectfully,

Nancy Will Shoun  
Lennis H. Will

Jay and Reba Will

Morris + Linda Woodring

Mike Will

Herma Will

Louise Skell

SIGNERS

NANCY WILLS SHOUN - 720 J Shoun Road (P.O.Box 600), Mountain City, TN 37683 - Trustee of Wills Cemetery

LEWIS H. WILLS - 311 Circle Dr. ( P. O. Box 917), Mountain City, TN 37683 - Trustee of Wills Cemetery

JAY AND REBA WILLS - 137 J Wills Lane, Mountain City, TN 37683 - are residents and property owners within or adjacent to the Wills Historic District

MORRIS AND LINDA (WILLS) WOODRING - 104 J Wills Lane, Mountain City, TN 37683 - are residents and property owners within or adjacent to the Wills Historic District

MIKE WILLS - 280 J Wills Lane, Mountain City, TN 37683 - is a resident, property owner and business owner (Silver Lake Market) within or adjacent to the Wills Historic District

NORMA WILLS - 922 Circle Drive ( P. O. Box 197), Mountain City, TN 37683 - is a property owner within or adjacent to the Wills Historic District

LOUISE SHULL - 126 Slimp Branch Road, Mountain City, TN 37683 - a descendent of Ruth Wills McQueen, has sold 42 acres for the construction of the Highway 91 bypass in Johnson Hollow

051890227  
ID# 051892812



SIERRA CLUB - Tennessee Chapter

June 20, 2005

Mr. Harold Draper  
NEPA Team Leader, TVA  
400 W. Summit Hill Dr.  
Knoxville, TN 37902

EA-Administrative Record  
Public Comment  
TN 91-Mountain City Bypass  
2003-85

Re: State Route 91 Improvements in Johnson County

Sutherland Wetlands

Dear Mr. Draper,

I am writing you on behalf of the Sierra Club to comment on your recently released list of options for the State Route 91 improvement project. After careful review of the listed alternatives, we would like to strongly recommend the implementation of Alternative I.

We feel that avoidance of the Sutherland Wetlands entirely is the absolute best way to ensure the protection of the rare and valuable species located in this unique habitat. By directing this project to the Northern Ridgeline of this area the project can solve the problems of congestion and safety on State Route 91, while still preserving the natural integrity of this fragile wetland. This solution only seems logical considering that it has been estimated that it will incur no additional cost to the improvement project.

We would like to express our appreciation to both USACE and TVA for providing the environmental assessment to make these alternatives possible.

We urge you to act with consideration to this precious habitat and opt for Alternative I and completely avoid unneeded harm to the Sutherland Wetland.

Sincerely,

Dan Grace  
State of Franklin Group-Sierra Club  
Co-Conservation Chair

407 W Poplar St  
Johnson City TN 37604



Recycled Paper  
Soy Ink

"Not blind opposition to progress, but opposition to blind progress."



051890219  
ID # 051892805

EA-Administrative Record  
Public Comment  
TN 91 Mountain City Bypass  
2003-85

Draper, Harold M.

**From:** MSijthoff@aol.com  
**Sent:** Sunday, June 19, 2005 8:23 AM  
**To:** Draper, Harold M.  
**Subject:** Improvements between SR 91 and US 421 in Johnson Co TN

Dear Mr Draper:

I'm writing you as suggested in the local Mountain City news paper, The Tomahawk, as rerouting of the subject bypass concerns me greatly. In May 2002 I bought 63 acres with the express intent to build an upscale housing development. The property fronts on Johnson Hollow Rd, but has 10 acres in the back which would front the originally proposed road, and, in fact, grading on that section has already been completed. The infrastructure of the development is near completion and now I find out that there are plans to reroute the road. This proposal would not only be costly to me as alternate access to the 10 acres is difficult, but the newly graded road also removed about 5 very old oak trees which made those 10 acres a lot more private and attractive.

As a resident of Johnson Co and TN tax payer it also concerns me that the considerable amount of money already spent on the new road would be wasted if alternatives are accepted. I, therefore urge you to recommend the road proceed as originally planned.

Sincerely Yours,

H.G.M. Sijthoff  
151 Jordan Ln, PO Box 200  
Mountain City, TN 37683

06/21/2005

051890228  
#ID 051892801



EA-Administrative Record  
Agency Comment  
TN 91 Mountain City Bypass  
2003-85

STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

June 17, 2005

Mr. Jon M. Loney, Manager  
NEPA Administration  
Environmental Policy and Planning  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, Tennessee 37902-1409

**RE: Environmental Assessment (EA) – State Route (SR) 91 Improvements  
Between US 421 and Cold Springs Road (Willis Road), Johnson County,  
Tennessee**

Dear Mr. Loney:

Thank you for the opportunity to comment on the above referenced document.

After a research of our office's files, we can locate no occasion where a grant administrated by this division has been awarded to the in the subject area in Johnson County. Therefore, we have no involvement in the State Route (SR) 91 Improvements area from a state or federal level.

Thank you for including this office during the review period.

Sincerely,

Mark Turmons, CPRP  
Director

MT/lh

Copy: Anne Marshall, East TN PARTAS Consultant



RECEIVED  
Environmental Policy and Planning

JUL 06 2005

STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Doc. Type: \_\_\_\_\_  
Index Field: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Project No.: \_\_\_\_\_

Division of Natural Heritage  
14th Floor L&C Tower  
401 Church Street  
Nashville, Tennessee 37243-0447  
Phone 615/532-0431 Fax 615/532-0231

June 27, 2005

Jon M. Loney, Manager, NEPA Administration  
Environmental Policy and Planning  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902-1499

Subject: Environmental Assessment (EA) – State Route (SR) 91 Improvements Between US 421 and Cold Springs Road (Wills Road), Johnson County, Tennessee

Dear Mr. Loney:

Thank you for your letter and enclosures regarding the above mentioned Draft EA for the proposed issuance of permits to the Tennessee Department of Transportation (TDOT) under Section 26a of the TVA Act and Section 404 of the Clean Water Act. It is the understanding of the Division of Natural Heritage (DNH) that the SR 91 project would involve the widening of US 421 within Mountain City and construction on new alignment north of Mountain City. It is also our understanding that construction on the Alternative D alignment began before Section 26a and Section 404 permits were applied for, and road grading has largely been completed between Mountain City and Johnson Hollow Road. TDOT has since halted construction until requisite permits are approved. The DNH has reviewed the information submitted and offers the following comments for consideration.

The DNH supports construction of a road alignment that avoids or minimizes adverse impacts to globally rare communities, and federal or state listed species as well as minimizes stream and wetland impacts. A review of our conservation database and a survey of the Laurel Creek and Wills Branch sites by representatives of DNH, TDOT and Water Pollution Control (WPC) indicate that numerous rare plant species occur in the general area (2-mile radius):

| Scientific Name               | Common Name               | Global Rank | State Rank | Federal Status | State Status |
|-------------------------------|---------------------------|-------------|------------|----------------|--------------|
| <i>Arenaria godfreyi</i>      | Godfrey's Stitchwort      | G1          | S1         |                | E            |
| <i>Berberis canadensis</i>    | American Barberry         | G3          | S2         |                | S            |
| <i>Caltha palustris</i>       | Marsh Marigold            | G5          | S1         |                | E            |
| <i>Campanula aparinoides</i>  | Marsh Bellflower          | G5          | S2         |                | S            |
| <i>Dryopteris cristata</i>    | Crested Shield-fern       | G5          | S2         |                | T            |
| <i>Galium palustre</i>        | Marsh Bedstraw            | G5          | S1         |                | S            |
| <i>Gentiana austromontana</i> | Appalachian Gentian       | G3          | S3         |                | S            |
| <i>Oenothera parviflora</i>   | Northern Evening-primrose | G4?         | S1         |                | S            |

Table Con't

| Scientific Name               | Common Name                | Global Rank | State Rank | Federal Status | State Status |
|-------------------------------|----------------------------|-------------|------------|----------------|--------------|
| <i>Sparganium angrocladum</i> | Branching Bur-reed         | G4G5        | S1         |                | E            |
| <i>Spiraea alba</i>           | Narrow-leaved Meadow-sweet | G5          | S1         |                | E            |
| <i>Symplocarpus foetidus</i>  | Skunk-cabbage              | G5          | S1         |                | E            |

State Status: E=Endangered; T=Threatened; S=Special Concern

The DNH concurs with the United States Fish and Wildlife Service that no federal listed species have been documented from the project corridor. However, seven of the eleven rare species documented from the general project area carry a State Rank of S1, meaning that these species are extremely rare and critically imperiled in the state, with five or fewer known occurrences. Of these, *Arenaria godfreyi*, also carries a Global Rank of G1, meaning that this species is critically imperiled globally. This rare, regional endemic has been extirpated from much of its former range, primarily as a result of habitat destruction.

The Alternative D corridor affects three wetlands including the Laurel Creek wetland and stream side wetlands along Wills Branch. Rare species documented from these wetlands and potentially at greatest risk include:

- Laurel Creek Wetland: *Arenaria godfreyi*, *Campanula aparinoides*, *Sparganium angrocladum*, *Spiraea alba*, and *Symplocarpus foetidus*. The Laurel Creek wetland also contains a globally rare wetland community, described as an Appalachian Calcareous Artesian Seepage Fen.
- Wills Branch Stream Side Wetlands: *Arenaria godfreyi* and *Caltha palustris*. These stream side wetlands appear to be directly impacted by the proposed Alternative D corridor.

In contrast, the Ridgeline Alternative (Alternative I) would cause fewer impacts to wetlands, streams and intact forests, by shifting the alignment to the southeast which follows a higher and drier route. The rare wetland plants listed above have not been identified within the Ridgeline Alternative corridor.

Subsequently, the DNH supports the Ridgeline Alternative and requests that TDOT make every effort to avoid adverse impacts to the state listed species and globally rare plant community documented from the project area, and where this is not feasible, offer appropriate mitigation.

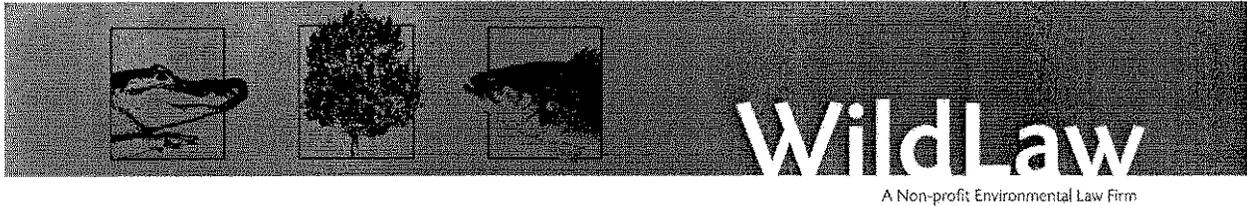
We thank you for considering Tennessee's rare species throughout the planning and implementation of this project. Should you have any questions, please do not hesitate to contact me at (615)532-0440.

Sincerely,



Kirstin Condict  
Data Manager

051890247  
ID# 051892798



June 24, 2005

Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902-1499

[hmdraper@tva.gov](mailto:hmdraper@tva.gov)

EA-Administrative Record  
Public Comment  
TN 91 Mountain City Bypass  
2003-85

**Re: Draft EA for State Route 91 Improvements between US 421 and Cold Springs Road**

Dear Mr. Draper:

On behalf of the **League of Women Voters** of Watauga,<sup>1</sup> the Tennessee Chapter of **Public Employees for Environmental Responsibility**, and the State of Franklin **Sierra Club**, I would first like to thank you for the careful review that the Tennessee Valley Authority has clearly given the Tennessee Department of Transportation's (TDOT) application for a 26a permit. Also, thank you for this opportunity to comment.

My clients find very sensible your decision to "expand the scope of analysis to the entire length of the roadway project" in recognition of "the relatively short length of the project and the number of stream crossings." This decision not only acknowledges the ecological reality of the area, but also the local perception of the valley as a consolidated historic area. Even more important, the League, PEER, and the Sierra Club are pleased that you have proposed a ridge alternative, which has always seemed likely to be the best option if a road is to be built.

The aspect of TDOT's proposed project of most concern to my clients is the proposed impact to Sutherland Swamp in Johnson County. Sutherland Swamp is located along proposed State Route 91 from U.S.421 to North of Cole Springs Road. This wetland is classified as an Appalachian Calcareous Artesian Seepage Fen—"only the second known occurrence of this globally rare wetland community type."<sup>2</sup> My clients are very concerned that the wetland functions and values of this important wetland have not been given the care and consideration they are due by TDOT and TDEC. Because TDOT submitted inaccurate maps with its original

<sup>1</sup> These comments are to be considered an addendum to the comments independently submitted by the League President, Cathy Riddle.

<sup>2</sup> James T. Donaldson, Botanist and Biological Consultant, *Sutherland Wetland Ecological Community Classification* (May 2004)(attached).

46 Haywood Street, Suite 323  
Asheville, NC 28801  
828.252.9223  
828.252.9074 (fax)  
[www.wildlaw.org](http://www.wildlaw.org)

application the wetland impacts were originally ignored, and an August 2003 Clean Water Act 401 certification and State of Tennessee IARAP permit were issued for a stream alteration in the area of the Swamp without the Tennessee Department of Environment and Conservation (TDEC) being aware of the existence of the most significant wetlands in the project corridor. TDEC is now considering a new application from TDOT to fill 0.069 acres of wetland permanently (Station 16+300 to 16+346) and to permit impacts to 144 feet of the spring which feeds a much larger area of the wetland (16+351 to 16+385). The history of evaluation of this project by TDOT and TDEC make it very difficult for the public to determine what the ultimate effects of this road would be on the Sutherland Swamp and other wetlands in the area, or even what the total scope of effects of each proposal will be. To understand why this is so, I have attached a letter I sent in April on behalf of these same clients to TDEC.

My clients are relieved that TVA is taking a different approach. It is commendable that you are considering the entire corridor for each alternative first, because of the interconnectedness of the ecosystem, and second, because this is the only logical way to ensure that cumulative effects are adequately addressed. Because of its hydrology, vegetation, and soils, Sutherland "Swamp" is actually a complex wetland, perhaps better described as an Appalachian artesian spring and calcareous artesian seepage fen complex.<sup>3</sup> In addition, there are associated beaver ponds which provide important bird habitat. Dividing the corridor into smaller sections would ignore the environmental (and cultural/historic) reality of the valley.

Another grave concern of the League, Sierra Club and PEER is the striking similarity between the maps showing the previous and present preferred project designs submitted to TDEC by TDOT. Originally, TDOT would have rerouted a branch of Laurel Creek with a resulting loss of 8.6 meters of channel length. At present, it appears (although it is not at all clear from the new maps) that TDOT proposes to fill 0.069 acres of Sutherland Swamp *and* place rock fill in the spring that provides part of the water supply to the Swamp. It is not at all clear that dumping an estimated 680 cubic meters of fill material into the water source will not adversely impact more than the 0.069 acres of directly impacted wetland. Once again, it appears from this draft EA that TVA is taking the better approach. Alternative I appears to offer a solution whereby a road can be built and the Sutherland Swamp protected—dependent, of course, on completion of the promised detailed roadway design plans which have yet to be developed for this alternative. And, of course, these design impacts will have to be considered and presented to the public for comment.

By law, only TVA's approach affords the appropriate respect to wetland values. "Most wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest." 33 C.F.R. §320.4. In particular, "[w]etlands which are ground water discharge areas that maintain minimum baseflows important to aquatic resources and those which are prime natural recharge areas; . . . and [w]etlands which are unique in nature or scarce in quantity to the region or local area" are recognized as wetlands "functions important to the public interest." 33 C.F.R. §320.4(b)(2). The

---

<sup>3</sup> Swamp is an inaccurate and simplistic term if one is trying to be scientifically accurate. However, wetlands in general are commonly referred to as swamps in Johnson County, and Sutherland Swamp has always been so called by those who live in the area and value its beauty and value in ecosystem services. Therefore, that is the terminology that League, Sierra Club, and PEER have chosen to use to describe the wetlands complex.

ridge alternative, I, appears to offer the best chance that destruction of important wetland functions will be minimized or avoided altogether since “[n]o wetlands have been identified along the Drystone Branch corridor which would be encroached upon by the widening of existing SR 91 under Alternative I.” EA, 15. Because I is the better alternative at this point in the evaluation process, my clients urge you to use your statutory authority to deny a permit for Alternative D which would harm

the environment, or sensitive resources (including, without limitation, federally listed threatened or endangered species, high priority State-listed species, wetlands with high function and value, archaeological or historical sites of national significance, and other sites or locations identified in TVA Reservoir Land Management Plans as requiring protection of the environment).

18 C.F.R. §1304.8. Accepting Alternative D would be an abuse of the public trust, if Alternative I is indeed a plausible alternative with many fewer impacts

The letter accompanying the Draft EA indicates that you are evaluating two action alternatives and a no action alternative for the SR 91 project. With the information currently available, my clients strongly favor Alternative I, and find Alternative D completely unacceptable. Thank you for your effort to find a way to avoid impacts to this very special wetland complex. Please do not hesitate to contact me if you need any additional information, and please continue to send me and each of the client groups any information related to this project.

Sincerely,



Rachel S. Doughty  
Attorney for PEER, Sierra Club, and League  
of Women Voters

Sutherland Wetland Ecological Community Classification  
Prepared by  
James T. Donaldson, Botanist and Biological Consultant  
May 2004

The following is an attempt to classify the Sutherland Wetlands along the proposed Highway 91 bypass around Mountain City, Johnson County, TN. This is an ongoing saga, with TDOT apparently determined to carry out at least partial destruction of a globally rare wetlands complex rather than take an upslope route through a pasture and successional white pine forest, neither of which are rare or uncommon ecosystems.

I have attempted to classify the wetlands in terms of pre-existing community types in order to stress their global significance and rarity. Some aspects of the Sutherland Wetland and the associated wetlands along Wills Branch may need either further refinement of the existing classifications, or description of new classifications, to include these wetlands.

Rare species known so far from the site: *Arenaria godfreyi* (G1 species), *Caltha palustris*, *Symplocarpos foetidus*, *Spiraea alba*, *Sparganium androcladum*, and *Campanula aparinoides*.

Potential habitat is present for a number of other rare species including: *Dryopteris cristata*, *Dryopteris carthusiana*, *Carex ruthii*, *Galium palustre*, *Glyceria laxa*, *Hypericum ellipticum*, *Veronica americana*, *Eriophorum virginicum*, *Triadenum fraseri*, *Sanguisorba canadensis*, Southern Bog Lemming, Star-nose Mole, and Bog Turtle.

The closest described community that fits the Sutherland Wetlands is the **Appalachian Calcareous Artesian Seepage Fen** (CEGL008461, G1; full community description attached below) which has been described from only one site, the TNC Schoolhouse Springs in nearby Shady Valley. **This is the second known occurrence of this globally rare wetland community type.** It is defined by the artesian hydrology and limestone geology, not just in terms of the plant species found at the site. This classification is the most appropriate one for the main Sutherland Wetland along Laurel Creek.

Most of the plant species are the same, and differences in species composition can generally be attributed to differing land use / management history (e.g. beavers and cattle are actively using the Sutherland Wetland, while it has been quite some time since the Schoolhouse Springs was actively used in such a manner).

#### Similar Communities and Alliances

**Calcareous Seepage Fens and Related Sites:** *Carex lurida* – *Carex leptalea* – (*Carex atlantica*, *Carex interior*, *Parnassia grandifolia*) Saturated Herbaceous Alliance.

Only two mountain wetland community classifications are in this alliance, the Appalachian Calcareous Artesian Seepage Fen, and the Southern Appalachian Ultramafic Fen (CEGL004997, G1) which is found in the Southern Blue Ridge of Virginia and perhaps also in North Carolina. The geology determines the appropriate classification.

**Beaver Pond:** In this instance, the artesian hydrology, local geology, and species composition as well as numerous other seeps and springs distinguishes it from the Southern Blue Ridge Beaver Pond Marsh (CEGL008433, G4?).

**Southern Appalachian Herb Bog:** *Carex* (*atlantica*, *echinata*) – *Eriophorum virginicum* –

Rhynchospora capitellata – Solidago patula Saturated Herbaceous Alliance.

The most broadly-defined and least floristically distinct Southern Appalachian Herb Bog (Low-Elevation Type, C EGL004156) is still a G1 community. The other community types in this alliance are the G1 Long Hope Valley Type (C EGL004157) and the G1 Typic Type (C EGL004158). Apart from the artesian hydrology and some of the plant species found at the site, the Sutherland Wetland is most similar to the Low-Elevation Type.

**High-Elevation Wetlands or Seepage Communities:** The Sutherland Wetland is not high enough to fit into any of the high elevation communities.

**In terms of a shrub community:** While the Appalachian Artesian Calcareous Seepage Fen readily includes the shrub component of the Sutherland Wetland, in terms of a shrub wetland community it fits within the Southern Appalachian Shrub Bog Alliance (Alnus serrulata – Salix sericea – Rhododendron (catawbiense, maximum) Saturated Shrubland Alliance), but does not perfectly fit an existing classification within the alliance. It appears that the shrub aspect of the Sutherland Wetland is somewhat intermediate between two of the described community types:

Low-Elevation Type, C EGL003916, G1G2. This community is generally not associated with seepages, but instead is associated with the floodplains of creeks or small rivers, and are rarely or never flooded.

Typic Type, C EGL003915, G1G2. Similar to this community in terms of hydrology, which is seepage driven but not in terms of geology which is associated with felsic gneisses or schists and acidic, nutrient-poor seepage rather than limestone geology.

#### Wills Branch Wetlands

The wetlands along Wills Branch are not as well developed as the main wetland. Their hydrology appears to be provided both by their location on the Wills Branch stream terrace and floodplain as well as by several base slope seeps and springs.

The geology is not acidic so it cannot be classified as the Southern Appalachian Wet Seepage Meadow (C EGL008438, G2G3). They are probably best classified as Southern Appalachian Herb Bog (Low-Elevation Type, C EGL004156, G1).

For more information regarding the above mentioned ecological communities, see:

NatureServe. 2004. NatureServe Explorer: An online encyclopedia of life [web application]. Version 3.1. NatureServe, Arlington, Virginia. Available <http://www.natureserve.org/explorer>. (Accessed: May 28, 2004)

#### Full Description of Appalachian Calcareous Artesian Seepage Fen:

---

CAREX STRICTA - CALTHA PALUSTRIS - OXYPOLIS RIGIDIOR - SYMPHYOTRICHUM PUNICEUM  
HERBACEOUS VEGETATION

Tussock Sedge - Yellow Marsh-marigold - Common Water-dropwort - Purple-stem Aster  
Herbaceous Vegetation

*Appalachian Calcareous Artesian Seepage Fen*

Ecological Group (SCS:MCS): Appalachian Highlands Alkaline Herbaceous Fens and Seeps (475-20; n/a)

---

#### ELEMENT CONCEPT

**Summary:** This community type is a saturated herb and shrub fen associated with artesian, calcareous springs. Dominant species are *Carex stricta*, *Caltha palustris*, *Symphytichum puniceum* var. *puniceum* (= *Aster puniceus* var. *puniceus*), *Thelypteris palustris* var. *pubescens*, *Rubus hispidus*, *Carex lurida*, *Typha latifolia*, *Carex atlantica*, *Salix sericea*, *Hypericum prolificum*, *Spiraea alba*, and *Alnus serrulata*.

**Environment:** This community is associated with bubbling artesian springs in a flat limestone valley bottom in the southern Appalachians at 2500-3000 feet elevation. Soils are variable mixtures of mucks and sands. Hydrology is saturated.

**Vegetation:** This community is herbaceous, with scattered dense, shrubby patches. The shrub stratum is patchy, and consists of *Salix sericea*, *Hypericum prolificum*, *Alnus serrulata*, *Spiraea alba*, and *Rosa palustris*. The herbaceous stratum is dominated by *Carex stricta*, *Caltha palustris*, *Thelypteris palustris* var. *pubescens*, *Symphytichum puniceum* var. *puniceum* (= *Aster puniceus* var. *puniceus*), *Rubus hispidus*, *Typha latifolia*, and *Carex atlantica*. Other species include *Galium tinctorium*, *Onoclea sensibilis*, *Oxypolis rigidior*, *Carex scoparia*, *Sanguisorba canadensis*, *Chrysosplenium americanum*, *Carex ruthii*, *Triadenum virginicum*, *Carex leptalea*, and *Carex tribuloides*.

**Dynamics:**

**Similar Associations:**

**Synonymy:**

**GRank & Reasons:** G1? (00-10-19). This association appears to be a naturally very rare community, associated with a highly unusual edaphic situation. Only one occurrence is definitely known, at Schoolhouse Springs, in Shady Valley, Johnson County, Tennessee. The one known site is a Nature Conservancy preserve.

**High-ranked species:** CAREX RUTHII (G3)

**Comments:** This type is based on plot data gathered by NatureServe ecologists in May 2000 (NatureServe Ecology - Southeast U.S. unpubl. data 2000).

#### ELEMENT DISTRIBUTION

**Range:** This community is known from a limestone "geological window" in the Southern Blue Ridge.

**Nations:** US

**States/Provinces:** TN:S?

**TNC Ecoregions:** 51:C

**USFS Ecoregions:** M221Dc:CCC

**Federal Lands:**

#### ELEMENT SOURCES

**Authors:** A.S. Weakley, SCS **Confidence:** 2 **Identifier:** CEG008461

**References:** NatureServe Ecology - Southeast U.S. unpubl. data



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
Division of Water Pollution Control

6<sup>th</sup> Fl. L & C Tower  
401 Church Street  
Nashville, Tennessee 37243-1534

December 10, 2003

Ms. Cathy Landy  
League of Women Voters of Watauga  
P.O. Box 536  
Mountain Home, Tennessee 37684-0536

Dear Ms. Landy:

Thank you for your thoughtful letter of November 3, 2003, expressing concerns about the protection of wetlands and associated rare plant populations in the vicinity of Mountain City. The wetlands are being or are proposed to be altered by a Tennessee Department of Transportation (TDOT) highway project. Your comments additionally raise concerns about our process of working with resource agencies, applicants, and the public in evaluating permit applications. I consider all of your comments important, but I am particularly concerned about your negative perception of our public participation processes.

It is my understanding that water quality permits have already been issued for impacts to 1.38 acres of wetlands that will be mitigated at the Nature Conservancy's Shady Valley wetlands mitigation bank. There were no negative comments concerning the proposed wetland fills during our public participation process. The U.S. Fish and Wildlife Service letter of April 4, 2003, expresses concerns about stream mitigation issues, but provides no significant comments on the wetland mitigation issue or on the known or possible presence of listed rare species. Their letter states, "the subject work should not be authorized before these issues are adequately addressed." Those concerns were resolved in a response to them by TDOT.

Both the Fish and Wildlife Service's letter and TDOT's response are a part of TDEC's permit file for this project. Permit files are maintained in Nashville where the permits are processed. Unless we are aware that there is a significant level of public interest in a project we do not maintain duplicate files. It would be logistically difficult to maintain duplicate files for every project we permit since there is normally active correspondence and files are being continuously updated as projects are evaluated and modified. We are

Ms. Cathy Landy  
December 10, 2003  
Page Two

not aware of any requests for review of the files or for information about this project until relatively recently. Had we been contacted with such a request, we would have made reasonable efforts to accommodate that interest. In many cases we have agreed to meet with interested parties in a project area and to bring the file with us so that it can be reviewed and discussed. The Division of Water Pollution Control is always interested in meaningful public participation as we implement the state's water quality protection program.

It was after the issuance of permits for the project that a new wetland area in the path of the proposed highway project came to our attention. The area in question had been classified by TDOT as a braided stream channel rather than a wetland, and a stream channel relocation was proposed. It is this wetland that contains the identified rare plant species. The overlooked wetland first came to our attention on July 23, 2003, when Jamie Donaldson at East Tennessee State University contacted Tina Robinson in our Johnson City Field office. Ms. Robinson immediately contacted Rick Noseworthy in TDOT's Knoxville regional office. On July 24 TDOT and TDEC personnel met on-site with interested parties to review the situation. TDOT notified the contractor not to alter the area in any way until the issues were resolved. That process is ongoing, and TDOT has yet to finalize their plans for this area.

While staffs from TDEC and TDOT were working together with interested parties to assure that the significant wetland resources were appropriately addressed, the permits for the project were being finalized in our Nashville office. I doubt that field staff from either agency were aware that permit issuance was imminent. The new information should have been immediately communicated to the permit section, but that did not happen. The permits for this project were finalized on August 7, 2003. Even though the communication with the permit office did not occur in time to hold up permit issuance pending resolution of the issue, activities were underway in the local area to assure that the overlooked area was given due consideration.

You eloquently describe some of the important public benefits of wetlands. We well understand the importance of our job to protect Tennessee's wetlands resources and have long been a leader among the southeastern states in this task. I believe we work effectively with TDOT staff, their consultants, other state and federal agencies, and other interested parties. Once in a while, as in this case, something is missed by an applicant and by our staff review.

Ms. Cathy Landy  
December 10, 2003  
Page Three

Again, I want to assure you that it is my intention for the division to engage in meaningful public participation processes in all that we do. We have long understood the importance of protecting streams and wetlands from the adverse impacts direct alterations. The existence of our Aquatic Resource Alteration Permit Program is evidence of that commitment. This program, established in state law, goes beyond the federal requirements of the Clean Water Act, and has been recognized by EPA and others as an important water quality protection program. Thank you for your concern for Tennessee water resources and for taking the time to express them on this matter.

Respectfully,



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



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
446 Neal Street  
Cookeville, TN 38501

April 4, 2003

Lt. Colonel Steven W. Gay  
District Engineer  
U.S. Army Corps of Engineers  
3701 Bell Road  
Nashville, Tennessee 37217

Attention: Ruben Hernandez, Regulatory Branch

Subject: Public Notice No. 03-10. Proposed improvements to SR-91 from 262 feet north of SR-34/SR-67 to 0.36 mile north of Cole Springs Road. Application by Tennessee Department of Transportation to impact 4,015 feet of stream and 1.38 acres of wetland, Johnson Hollow Branch, Wills Branch, and Drystonc Branch watersheds, Johnson County, Tennessee.

Dear Colonel Gay:

Fish and Wildlife Service (Service) personnel have reviewed the subject public notice. The applicant proposes to fill, encapsulate, and/or relocate 4,015 feet of streams. Approximately one and one-third acres of wetlands would also be filled. On-site tree planting has been proposed as mitigation for stream impacts, and 2.76 credits would be deducted from the Shady Valley Wetland Mitigation Bank to mitigate wetlands impacts. The following constitute the comments of the U.S. Department of the Interior provided in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Details of stream channel construction were not fully described in the subject public notice. Habitat constituents of the new stream channels should duplicate those of the existing channels to be filled. Factors such as riffle/pool ratios, meanders, width/depth ratios, and bank slopes should be discussed with all resource agencies prior to authorization of the proposed work.

The applicant has proposed to plant two rows of native riparian trees to mitigate stream impacts. We recommend that trees be planted on 10-foot centers to establish a 50-foot-wide forested riparian zone where feasible.

|                   |                |         |                    |            |   |
|-------------------|----------------|---------|--------------------|------------|---|
| Post-It® Fax Note | 7671           | Date    |                    | # of pages | 3 |
| To                | JENNIFER WALLS | From    | J. RUBEN HERNANDEZ |            |   |
| Co./Dept.         | TWPC           | Co.     | USACE              |            |   |
| Phone #           | 615/532-0707   | Phone # | 615/369-7519       |            |   |
| Fax #             | 615/532-0046   | Fax #   | 615/369-7501       |            |   |

Open-bottom box culverts should be used in order to maximize the presence of gravel and cobble in the stream at the project sites and their use by biota. If this is not feasible, the upper surface of the base of the culverts should be buried a minimum of six inches in the stream substrate.

The replacement of stream functional losses is particularly difficult. We are not aware of any stream creation or restoration project in Tennessee that has resulted in comprehensive replacement of all aquatic resource functions. Tree plantings, properly executed, would only replace one of several stream/riparian habitat parameters. Considering the present level of technology in mitigating stream impacts, we view the creation of "extra on-site mitigation" as infeasible at this point.

In summary, we have three main concerns. Stream channels to be used as mitigation should duplicate local natural (i.e., non-disturbed) channels; adequate forested, riparian zones should be established; and natural substrate at culvert sites should be ensured. If stream functions cannot be completely replaced nearby, other means of mitigation (e.g., in-lieu-fee payment at a rate of \$200 per foot of stream encapsulation or filling) should be considered. The Service position is that the subject work should not be authorized before these issues are adequately addressed.

Thank you for this opportunity to provide input. Please contact David Pelron of my staff at 931/528-6481 (ext. 204) if you have questions about these comments.

Sincerely,



Lee A. Barclay, Ph.D.  
Field Supervisor

cc: Tom Welborn, USEPA, Atlanta, GA  
Dan Sherry, TWRA, Nashville, TN  
Dan Eagar, TDEC, Nashville, TN

**Rachel Doughty**

---

**From:** Gabrielle Call [gcall@TNC.ORG]  
**Sent:** Thursday, April 28, 2005 12:20 PM  
**To:** rachel  
**Subject:** RE: Sutherland Wetland Update

Hi Rachel,

In response to your earlier e-mail, I conducted phone research in August, 2003 regarding TDOT's road construction plans at the Sutherland Wetland site in Mountain City. A TDOT employee in the agency's east TN field office confirmed during that conversation that TDOT's pre-construction ecological survey at the site documented the wetland habitat, but for an unexplained reason, the wetland was not properly noted on the ensuing construction plan. The TDOT employee also stated that the expected wetland impact was to be two-tenths of an acre.

Gabby Call  
Associate State Director  
The Nature Conservancy, TN Chapter

RECEIVED

JUL 22 2002

Natural Resources



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION  
ENVIRONMENTAL PLANNING & PERMITS DIVISION**  
SUITE 900, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-0334

July 18, 2002

Mr. Dan Eagar  
Tennessee Dept. of Environment and Conservation  
Division of Water Pollution Control  
7<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, TN 37243-1534

**Subject: State Route 91 from U.S. 421 (SR-34/67) intersection in  
Mountain City to 0.54 km north of Cole Springs Rd.,  
Johnson County, Tennessee**

Dear Mr. Eagar:

The Tennessee Department of Transportation (TDOT) proposes to upgrade the existing two-lane SR-91 in Johnson County, Tennessee to an improved two-lane roadway with truck climbing lanes and ten-foot shoulders. The proposed project (map attached) will be entirely on new alignment and will result in permanent impacts to portions of two wetlands (attachments).

These wetlands are located in a large pasture, with numerous cattle having access to both sites. Soils at both locations were 10 YR 5/1, 5/2, and 4/2 based on the Munsell Soil Color Charts. Mottles and oxidized root zones were noted at both sites as well. Due to the livestock disturbance, vegetation at these wetland sites was limited mainly to scattered clumps of rushes and sedges, with spicebush and jewelweed also present.

Due to the location of these wetlands, avoidance was not possible. As a result, a total of 1.38 acres of wetland will permanently impacted. No suitable areas are present within the project limits to mitigate the affected wetland acreage.

Therefore, the TDOT respectfully requests permission to mitigate the 1.38 acre wetland impact at the Shady Valley Wetland Mitigation Bank, in Johnson County,

Tennessee. The impacted wetland is within the service area for the SWMB and would be mitigated at a 2:1 ratio. Thus a total of 2.76 credits would be required the 1.38 acre of impact.

Thank you for your assistance with this project. If you have any questions, or need additional information, please contact Keven Brown at (865) 594-9395.

Respectfully,



Lilah Miller  
Biologist  
Environmental Planning & Permits

Attachments

LM:KB/kb

Xc: Mr. Wade Whittinghill - COE  
Mr. Dan Sherry - TWRA  
Mr. Eric Somerville - EPA  
Mr. Bob Bay - FWS  
Mr. Keven Brown - TDOT  
Mr. John Hewitt - TDOT  
Reading File  
File



May 3, 2005

401 Church Street  
L & C Annex, 1st Floor  
Nashville, Tennessee 37243-0435

**Re: Clean Water Act 401 certificate and Tennessee Aquatic Resource Alteration Permit NRS File # 02.454 for Sutherland Swamp**

Dear Commissioner Fyke:

On behalf of the League of Women Voters of Watauga, the Tennessee Chapter of Public Employees for Environmental Responsibility, and the State of Franklin Sierra Club I request that you reexamine permit NRS #02.454 issued in 2003 by the Tennessee Department of Environment and Conservation ("TDEC") which allows avoidable impacts to Sutherland Swamp as part of a road construction project.<sup>1</sup> I ask also that you cease progress on the permit NRS #04.420 request described by public notice #05-24 because this and the permit issued in 2003 in reality cover the same project and should therefore be considered together.

TDEC issued a Clean Water Act § 401 certification and Tennessee Aquatic Resource Alteration Permit ("ARAP") in response to a Tennessee Department of Transportation ("TDOT") application (referred to collectively as "August 2003 certification" hereinafter).<sup>2</sup> Now TDOT has requested permission to expand its impact to include additional wetlands.<sup>3</sup> Because the certification was issued on the basis of inaccurate and incomplete information, we request that the August 2003 certification be withdrawn and that TDEC require TDOT to reconsider the project as a whole and reapply now that all facts are known.

The wetland which concerns us is Sutherland Swamp in Johnson County. Sutherland Swamp is located along proposed State Route 91 from U.S.421 to North of Cole Springs Road.

---

<sup>1</sup> Technically, because of its hydrology, vegetation, and soils, Sutherland "Swamp" is a complex wetland, perhaps better described as an Appalachian artesian spring and calcareous artesian seepage fen complex. In addition, there are associated beaver ponds which provide important bird habitat. Swamp, therefore, is an inaccurate and simplistic term if one is trying to be scientifically accurate. However, wetlands in general are commonly referred to as swamps in Johnson County, and Sutherland Swamp has always been so called by those who live in the area and value its beauty and value in ecosystem services. Therefore, that is the terminology I will use in this letter.

<sup>2</sup> This is NRS # 02.454.

<sup>3</sup> See Public Notice # 05-24 issued January 6, 2005 by the Tennessee Department of Environment and Conservation, expiration date February 5, 2005.

46 Haywood Street, Suite 323  
Asheville, NC 28801  
828.252.9223  
828.252.9074 (fax)  
www.wildlaw.org

This wetland is classified as an Appalachian Calcareous Artesian Seepage Fen—"only the second known occurrence of this globally rare wetland community type."<sup>4</sup> Because TDOT submitted inaccurate maps with its application and because of miscommunication within TDEC, the August 2003 certification was issued without TDEC even being aware of the existence of the most significant wetlands. TDEC is now considering allowing TDOT to expand the project area to include an additional 0.069 acres of wetland as well as a spring seep and a small channel which were not included in the original application.<sup>5</sup> This should not be done until the original omissions are addressed, or the result will be segmented consideration of the project. It would be a mistake and a waste of public funds to leave consideration of the most significant impacts to aquatic resources until after considerable time and energy have been sunk into the project. This would set a poor precedent for future applicants who might intentionally submit incomplete applications realizing they could be easily amended later. A more relaxed permitting process would make TDEC's job more difficult and would frustrate the public's ability to understand and participate in the permitting process. For these reasons, we hope you will require that the whole impact to Sutherland Swamp and its surrounds be considered in one certification.<sup>6</sup>

### **The August 2003 Certification Should be Withdrawn**

The Tennessee Department of Transportation sought and then received certification from TDEC to proceed with the Route 91 project on August 7, 2003 ("August 2003 certification").<sup>7</sup> Because of the commissioner of TDEC's "obligation to take all prudent steps to secure, protect, and preserve [the] right" of the people of Tennessee to unpolluted waters, certification should not have been granted, and perhaps would not have been had all facts been before the agency.<sup>8</sup> **You have the authority to revoke this certification under T.C.A. § 69-3-108(2) because TDOT "[o]btain[ed] the permit by misrepresentation or failing to disclose fully all relevant facts" and because TDEC was therefore not able to consider practicable alternatives to destroying Sutherland Swamp.**<sup>9</sup>

To obtain a § 401 Certification under the Federal Clean Water Act or an individual Aquatic Resource Alteration Permit, the applicant (TDOT) "must describe the proposed activity and include all the necessary technical information for the Commissioner to make a determination, including an evaluation of practicable alternatives."<sup>10</sup> TDOT's application

---

<sup>4</sup> James T. Donaldson, Botanist and Biological Consultant, *Sutherland Wetland Ecological Community Classification* (May 2004)(attached).

<sup>5</sup> While these numbers may seem small, Between the 1780s and 1980s Tennessee lost 59 percent of its wetland acres. [http://www.epa.gov/owow/wetlands/vital/epa\\_media/usa.gif](http://www.epa.gov/owow/wetlands/vital/epa_media/usa.gif). This trend has not been reversed. Because wetlands are often biological hotspots the ecosystem values they provide exceed their proportional share of the landscape. Once lost, many wetland types are difficult to restore or create.

<sup>6</sup> There is precedence for revoking a certification because of incomplete survey work. The 840 bypass was halted because multiple streams were encountered in construction that were not present on the survey maps.

<sup>7</sup> Rule 1200-4-7-.03(4): "Certification" means an Aquatic Resource Alteration Permit under the Tennessee Water Quality Control Act of 1977, as required by §401 of the Federal Water Pollution Control Act, which certifies, either unconditionally or through imposition of terms under which the activity must be carried out, that the activity will comply with applicable provisions of §§301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Chapter 1200-4-1 of the Rules of the Water Quality Control Board and the Department of Environment and Conservation and the Act.

<sup>8</sup> Tenn. Code Ann. § 69-3-102(a).

<sup>9</sup> See also Rule 1200-4-7-.04(6)(b)(2).

<sup>10</sup> Rule 1200-4-7-.04(3)(b) & (5)(a).

included inaccurate, and therefore misleading, maps and information. TDEC has not disputed this, acknowledging that at the time the August 2003 certification was issued TDEC was unaware of the high quality wetland in the project area:

It was after the issuance of permits for the project that a new wetland area in the path of the proposed highway project came to our attention. The area in question had been classified by TDOT as a braided stream channel rather than a wetland, and a stream channel relocation was proposed. It is this wetland that contains the identified rare plant species.<sup>11</sup>

Because of a lack of communication between TDEC's field staff and those in the Nashville offices, the permit-writing staff issued a permit to destroy a wetland they did not even know existed. Paul Davis admitted that "[t]he new information should have been immediately communicated to the permit section, but that did not happen. The permits for this project were finalized on August 7, 2003."<sup>12</sup> The effect is that TDEC issued a certification to alter "a braided stream channel rather than a wetland."<sup>13</sup> This cannot therefore be a valid certification for effects to the Sutherland Swamp.

While TDEC assured that "[e]ven though the communication with the permit office did not occur in time to hold up permit issuance pending resolution of the issue, activities were underway in the local area to assure that the overlooked area was given due consideration."<sup>14</sup> This is putting the cart before the horse. The purpose of the permitting process is to ensure that the environmental implications of a project are considered *before* permits are granted allowing waters of the State to be impacted. The Commissioner is required to consider the following factors in making his decisions on a permit *application*:

1. direct loss of stream length, waters, or wetland area due to the proposed activity;
2. direct loss of in-stream, waters, or wetlands habitat due to the proposed activity;
3. impairment of stream channel stability due to the proposed activity;
4. diminishment in species composition in any stream, wetland, or state waters due to the proposed activity;
5. direct loss of stream canopy due to the proposed activity;<sup>15</sup>
6. whether the proposed activity is reasonably likely to have cumulative or secondary impacts to the water resource;<sup>16</sup>
7. conversion of unique or high quality waters as established in Rule 1200-4-3-.06 to more common systems;
8. hydrologic modifications resulting from the proposed activity;
9. the adequacy and viability of any proposed mitigation including, but not limited to, quantity, quality, likelihood of long term protection, and the inclusion of upland buffers;<sup>17</sup>
10. quality of stream or wetland proposed to be impacted;
11. whether the state waters is listed on the §303(d) list; whether the proposed activity is located in a component of the National Wild and Scenic River System, a State Scenic River, waters designated as Outstanding National Resource Waters, or waters identified as high quality

---

<sup>11</sup> See letter from Paul E. Davis, Director, Division of Water Pollution Control to Cathy Landers (Dec. 10, 2003)(attached).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> This factor is especially relevant on the upper reaches of Wills Branch.

<sup>16</sup> Degradation by sedimentation is cumulative; increase in volume & speed of runoff caused by filling and drainage of the road, is secondary.

<sup>17</sup> Mitigation wetlands are seldom adequate replacements. Much of the Shady Valley mitigation wetlands are overrun or in danger of being overrun by a water-tolerant pasture grass, eliminating most native species. Rick Foster, personal communication April 25, 2005 (available on request).

waters as defined in Rule 1200-4-3-.06, known as Tier II waters; whether the activity is located in a waterway which has been identified by the Department as having contaminated sediments; and whether the activity will adversely affect species formally listed in State and Federal lists of threatened or endangered species; and

12. any other factors relevant under the Act.<sup>18</sup>

Only after each of these considerations has been weighed and addressed should a permit be issued. Since that was not the case here, we respectfully request that the August 2003 certification be withdrawn until such an evaluation can be made.

The fact that the previous commissioner was unable to consider each of the elements above before issuing the August 2003 certification strongly suggests that public notice could not have contained all information required by Rule 1200-4-7-.04(b). Rule 1200-4-7-.04(c) requires that the public notice include (among other things):

3. A brief description of the proposed activity;
4. A brief description of the scope of the proposed activity;
5. The location of the state waters impacted by the proposed activity;
6. A sketch or detailed description of the location of the proposed activity and the subject waters of the state;
7. The purpose of the proposed activity;
8. The watershed of the subject waters;
9. A description of the conditions of the subject waters and the watershed, (e.g., physical conditions of the waters, quality of the waters such as size, flow, substrate, channel, etc.)

As indicated above, at the time the permit decision was made, TDEC mistakenly believed it was dealing with a stream, not a wetland, and therefore public notice was inadequate.

That the August 2003 certification has not yet been withdrawn has caused confusion by the public and within the involved agencies. Even if TDOT did not intend to segment the project into two projects, this is the result. Because of the omissions in the original TDOT permit, TDEC has not presented the entire project to the public, nor has it considered the whole effect on the Sutherland Swamp either in the new or the supplemental certification. Therefore, there are two certification processes for only one project. We appreciate TDEC's efforts to protect wetlands in Tennessee. Part of doing so is admitting when the agency makes a mistake, as Mr. Davis has admirably done. The second step is to correct that mistake. We hope you will do so by withdrawing the August 2003 certification, looking at the project as a whole, and communicating the impacts to the whole wetland with the public.

TDEC's rules require that "if the nature of the affected waters is such that mitigation is not reasonably likely to result in no net loss of water resource values, and if there is a practicable alternative to the activity which through avoidance or minimization of impacts would result in no net loss, then such alternative shall be selected."<sup>19</sup> TDOT's application offered no evaluation of practicable alternatives. It merely asserted that alternatives were considered. Apparently all of those alternatives followed the existing route of the road and would neither have entered the valley, nor damaged the Sutherland Swamp.<sup>20</sup> None of these alternatives was chosen, and the

---

<sup>18</sup> Rule 1200-4-7-.04(6)(c).

<sup>19</sup> Rule 1200-4-7-.04(5)(a).

<sup>20</sup> Personal communication with Brian Canada, TDEC (April 7, 2005).

only explanation we have been given to date is that the choice was made “due to historic property and right of way considerations.”<sup>21</sup>

TDOT proposed to mitigate for the destruction of Sutherland Swamp by debiting, at a 2:1 ratio, 2.76 acres from the Shady Valley Wetland Mitigation Bank in Johnson County Tennessee.<sup>22</sup> This is the minimum ratio for wetland mitigation by restoration.<sup>23</sup> Considering the biological significance of the Sutherland Swamp, this is not an appropriate compensation for the permanent loss of resource value associated with this proposed project. Further, since TDEC was not even aware of the wetland at the time the permit was issued, it is impossible that the agency used its “best professional judgment” to determine the ratio “based on the resource value and functions of the affected wetland, resource value of the mitigation, and the likelihood of success of mitigation.”<sup>24</sup> Likewise, TDEC could not have included a “monitoring and reporting program to document timely achievement of a successful mitigation wetland and remedial actions to correct any deficiency” for a wetland it did not know existed.<sup>25</sup>

The net result of the inverted permit process described above is that TDEC has certified an activity that will destroy a significant portion of a globally rare wetland type, with no alternatives analysis in the project file, and an admission that those writing the permit were not even aware of the existence of the wetland. To compensate for this loss to the citizens of Tennessee, TDOT will be required to purchase wetland credits at merely the minimum allowed ratio. Finally, since the U.S. Army Corps of Engineers also clearly relied on the same misleading language that was originally reported to TDEC to issue its CWA § 404 permit, the State has failed to fulfill the gatekeeper function that the § 401 certification is supposed to provide. We hope you will agree that these results are outside the spirit and letter of the law.

### **Water Supply Status Needs to Be Considered**

Although there is no mention of this fact in the certification file, Sutherland Swamp and its associated springs is a water supply in dry years. Water was pumped from Wills Branch to Silver Lake during recent drought years to provide public water. TDEC should consider the public health implications as well as the financial implications of impacting a back-up water supply.

### **Sutherland Swamp Needs to Be Evaluated for Classification as a High Quality Water**

There is no evidence that the excellent quality of the Sutherland Swamp was considered (or even realized) in issuing the August 2003 certification. Apparently a public hearing is proposed for June or July for the supplemental or new certification for the alteration of the additional 0.06 acres of wetland. This should not proceed until TDEC has complied with antidegradation rules.<sup>26</sup>

---

<sup>21</sup> *Id.*

<sup>22</sup> See letter from Angela L. Duncan, TDOT to Ron Gatlin (U.S. COE)(Nov. 18, 2002).

<sup>23</sup> See Rule 1200-4-7-.04(7)(b)(2).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at (b)(3).

<sup>26</sup> These new antidegradation rules were written after 3<sup>rd</sup> Circuit Court Judge Barbara Haynes found that public participation is a mandatory element of the State’s anti-degradation rules and that existing rules were inadequate to provide that public participation.

Under Tennessee's regulations, the Sutherland Swamp likely is eligible for Tier II high quality waters status because it is a "[w]ater[] that provide[s] habitat for ecologically significant populations of aquatic or semi-aquatic plants or animals."<sup>27</sup> Degradation of Tier II high quality waters are allowed only in very limited circumstances. As such, TDEC cannot allow degradation of this water

unless and until it is affirmatively demonstrated to the Department, after full satisfaction of the following intergovernmental and public participation provisions, that a change is justified as a result of necessary economic or social development and will not interfere with or become injurious to any classified uses existing in such waters.<sup>28</sup>

Public participation associated with the August 2003 certification was inadequate because the scope of the impact was not disclosed in a public notice—the most critical part of the Swamp was omitted. The Fish and Wildlife Service ("FWS") recommended against certification in 2003 because "[d]etails of stream channel construction were not fully described in the subject public notice."<sup>29</sup> What is perhaps most telling in this statement is that the FWS was not even aware of the Sutherland Swamp and it could not grant its approval of this project.

Public participation once again will be inadequate in the proposed public hearing in June or July if TDEC has not considered the effect of TDOT's proposed project on the entire Sutherland Swamp and described the entire scope of the likely effects in the public notice.<sup>30</sup> Since this is a new plan, a new certification is required—both so that the involved agencies can credibly consider the project, and so that the public can be informed and included as required by law.

The State Route 91 project, as redefined, will cause degradation of the Sutherland wetlands. TDEC cannot merely amend the previous certification because the *de minimus* rule does not apply. Rule 1200-4-3-.04(4) defines *de minimus* impacts which will not be defined as degradation for the purposes of the antidegradation rules. Only those alterations with "no measurable or less than 5 percent loss of assimilative capacity" will be considered *de minimus*. Importantly, "[d]egradation will not be considered *de minimus* if a substantial loss (more than 50 percent) of assimilative capacity has already occurred."<sup>31</sup> The original certification already allowed filling of the majority of the Sutherland Swamp.<sup>32</sup> The additional 0.06 acres of wetlands that will be impacted due to the change of plans is therefore degradation under TDEC's own rules.

Tennessee's antidegradation rules require that an "alternatives analysis shall be part of the application process and shall include a discussion of the feasibility, social and economic considerations, and environmental consequences of each potential alternative."<sup>33</sup> Perhaps as a result of the inaccurate information TDEC was given, TDOT was allowed to choose the most

---

<sup>27</sup> Rule 1200-4-3.06(2)(a).

<sup>28</sup> Rule 1200-4-3.06(3)(a). See [http://www.epa.gov/waterscience/standards/wqslibrary/tn/tn\\_4\\_wqs.pdf](http://www.epa.gov/waterscience/standards/wqslibrary/tn/tn_4_wqs.pdf) which suggests that EPA has recognized Tennessee's new anti-deg rules (says effective Sept. 30, 2004).

<sup>29</sup> See attached letter from Lee A. Barclay, Field Supervisor, U.S. Fish and Wildlife Service, to Lt. Colonel Steven W. Gray, District Engineer, U.S. Army Corps of Engineers (April 4, 2003).

<sup>30</sup> See Rule 1200-4-3-.06(3)(d)(2).

<sup>31</sup> Rule 1200-4-3-.04(4).

<sup>32</sup> See map accompanying the 401 permit application.

<sup>33</sup> Rule 1200-4-3-.06(1).

environmentally damaging of the alternatives studied. The only explanation TDEC has for allowing this is historic property and right of way considerations.<sup>34</sup> No mention is made of the cost of constructing the road on the soluble karst bedrock supporting the Sutherland Swamp at the confluence of Wills Branch and Laurel Creek which is demonstrably unstable. The large springs and flooded sinkholes on this property will require expensive engineering to construct and maintain a safe and stable roadway. The permit allowed the “loss of 4015’ of stream due to encapsulation within culverts, channel changes and stream loss. . . , the permanent filling of 1.38 acres of wetlands and temporary impacts to 0.08 acres of wetlands” even though several more environmentally benign and possibly economically sensible alternatives were available and plausible.

TDOT has failed to protect wetland value, despite its protestations that it considered alternatives. Angela Duncan of TDOT stated that “Efforts were made during the planning and design phases of this project to avoid impacts to waters of the U.S. and the State to the extent practicable, and to minimize impacts that were not avoidable. Mitigation for these impacts has been proposed on the project site, where practicable.”<sup>35</sup> The record suggests that this is not the case. In fact, it appears that TDOT:

- Submitted construction plan maps that did not include the wetlands located during the pre-construction ecological survey at the site;<sup>36</sup>
- Chose the most damaging alternative (through a wetland, stream and its floodplain) ostensibly to avoid a historic area, but probably actually to reduce construction costs since routing the road through the pasture would have required more excavation;
- Said it would do on-site mitigation which the Fish and Wildlife Service found to be inadequate;<sup>37</sup>
- Incorrectly reported to members of the public that “the final wetland impact will be on the order of two-tenths of an acre”;<sup>38</sup>
- Planned the road to curve into the wetland;
- Mischaracterized the quality of the wetland. TDOT asserted that “vegetation at these wetland sites was limited mainly to scattered clumps of rushes and sedges, with spicebush and jewelweed also present.”<sup>39</sup>

## Conclusion

“Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted

---

<sup>34</sup> “The proposed alignment of SR-91 has been determined under the original permit. TDOT presented five alternatives (A-D) and the “no-build” alternative. The first three (A-C) followed, approximately, the existing SR-91. The final alternative (D) was selected to be the preferred alignment due to historic property and right of way considerations.” Brian Canada, Personal communication (April 7, 2005). This is particularly ironic in light of the fact that TDOT is being sued by Becky Johnson for the destruction of her historic property which is located in the chosen road path.

<sup>35</sup> Angela L. Duncan, letter to Ron Gatlin, U.S. COE (Nov. 18, 2002).

<sup>36</sup> Phone conversation between Gabby Call, Nature Conservancy, and TDOT employees (August 2003)(see attached email).

<sup>37</sup> See footnote 29.

<sup>38</sup> See footnote 36.

<sup>39</sup> Letter from Lilah Miller, biologist from TDEC to Dan Eager TDEC (July 18, 2002)(attached).

waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right.<sup>40</sup> Governor Bredesen was elected to uphold this trust. The Sutherland Swamp certification presents an opportunity to TDEC to remedy past errors, demonstrate professionalism and care in protecting Tennessee's natural resources, and at the same time, establish a more efficient model of permit processing. To those ends, we request that you exercise your right to withdraw the now-inaccurate August 2003 certification which permits the destruction of the Sutherland Swamp, cease action on NRS #04.420, and require the TDOT to submit a new and complete application.

We ask that you direct TDEC staff to begin the process of evaluating Sutherland Swamp's potential for Tier II status, and that you postpone any further public meetings regarding new or supplemental certification of the TDOT project until this status has been determined. Only when these steps have been taken should TDOT be allowed to initiate a new request for certification, and that request should cover all of the impacts to the Sutherland Swamp complex instead of a few pieces at a time. Because of the existence of a feasible alternative route further upland that will avoid impacts to the Swamp, there is an opportunity for a win-win solution to this problem.

We thank you for considering our comments, and look forward to working with you to protect Tennessee's water quality and aquatic habitat. Please do not hesitate to contact us if you have questions about our concerns or the Sutherland Swamp. We would be happy to arrange a visit to the Swamp for you if you are interested.

Sincerely,

Rachel S. Doughty

---

<sup>40</sup> Tenn. Code Ann. § 69-3-102.