

UPDATE - JUNE 2005

Following our intervention in this matter last year, the applicant was told to revise their application if they were to pursue this project, and it has been on hold since. Following the change of leadership at TDEC this spring with a new commissioner and deputy commissioner, we were recently informed that they now consider this application terminated and the matter closed.

It remains to be seen if the applicant will try again, but for now we will consider this a victory.

PEER works with neighbors to stop political pull by developers to fill in Memphis wetland near what's left of Nonconnah Creek



Cyprus knees around wetland in east Memphis
[from December 2003 site visit - more pic's below]

Below are items related to this issue:

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December 15, 2003

Commissioner Betsy Child  
TN Department of Environment and Conservation  
21st Floor L & C Tower  
401 Church Street  
Nashville, TN 37243

Re: Nonconnah Creek Wetland Permit

Dear Commissioner Child:

Our office has recently been made aware of a situation in Memphis that is a cause for concern over the proper handling of a permit request for a proposed alteration of a wetland. The site involved is known as the Loewenberg property, and the applicants are

Bronze and Hyneman. Information I received from an attorney representing area citizens opposed to the project is that the applicants, described as politically well connected, understood that the permit was likely to be denied, so they made some contacts and the project was reassigned from a staff scientist to upper management where they hoped for a different outcome. Regardless of the other details in this case, in our experience across the country, it always send up red flags to our organization when projects are removed from the normal staff level and handled by upper management.

We ask that you look into this matter and see that this, like any other permit application, is handled in the normal, scientific manner and not given special treatment or politicized in any manner that sends the wrong message. We looked forward to the new administration of Gov. Bredesen and anticipated that interference with the normal permit process or the imposition of politics over science and the public interest would no longer be tolerated, and we hope that to still be the case. But the perceived elevation of a controversial wetland permit from staff to upper management sends the wrong message, and if that is in fact the case, it is hoped that you would want to know about and correct this situation.

In the case at hand, documents overwhelmingly indicated that from a scientific, regulatory, and public policy viewpoint, the project as presented in the public notice (No. TN-2002-497 TD) and public participation process has serious flaws that would not allow permit approval. Comments from state and federal resource agencies as well as the public, point out a variety of problems and conflicts with regulations that are in the record and need not be repeated here. This site was slated for a natural area project by the City of Memphis and Corps of Engineers, and I understand that funding might have recently been made available. Additionally, due to the unique characteristics of this site, containing one of the few sizable remaining wetlands along the much abused Nonconnah Creek, allowing filling and alterations would appear to conflict with the recent sediment TMDL proposal. It also appears that due to their unique status for the watershed, the wetlands in question might also qualify as High Quality Waters (Tier 2) under the state's antidegradation provisions, which do not appear to have been followed in the application process thus far. These additional issues, which do not appear to have thus far been considered, need to be addressed.

We ask that you look into this matter and see that the normal process is followed to yield a permit decision, and that all applicable issues such as avoidance, antidegradation, and consistency with the TMDL are adequately addressed. Thanks you for your attention to this matter.

Sincerely,

Barry Sulkin

Director  
Tennessee PEER

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More of wetland from Dec. 2003 visit
[more pic's below]

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From Memphis Commercial Appeal

Editorial January 14, 2003

## **Move carefully in developing watershed**

URBAN STREAMS usually attract little notice, much less appreciation. But the importance of protecting them is growing as the secrets of the environment unfold.

One recent study points out the important role that Nonconnah Creek plays in Memphis. The polluted stream, no more than a paved ditch in some places, is most likely a source of the city's famously pure groundwater.

It may only be a minor source, said Dan Larsen, a research associate at the Ground Water Institute at the University of Memphis, but there is persuasive evidence that Nonconnah Creek water is finding its way through cracks in the clay beneath it and into the Memphis aquifer.

The Memphis aquifer, located 500 feet and more below the surface, is being tapped by Memphis Light, Gas and Water Division's wells. It's in your morning coffee.

There is no evidence that the chemicals that pollute Nonconnah Creek, including poly chlorinated biphenyls (PCBs), dioxin and chlordane, are present in Memphis drinking water, but this issue will become more important to monitor in the future, Larsen told The Commercial Appeal.

Runoff has inflicted much harm to Nonconnah Creek, but future damage can be controlled. Decisions about adjacent development must be predicated on the goal of protecting it from further harm.

Still pending before state and federal officials is an engineering firm's application for a permit to fill wetlands on a 33-acre tract in East Memphis that would contribute additional runoff to the stream.

The fill would be necessary for developers Jeff Bronze and Kevin Hyneman to go ahead with a plan to build houses on the site near the junction of Interstate 240 and Bill Morris Parkway.

Residents of the nearby Balmoral neighborhood are among those who oppose the project. Tennessee PEER - Public Employees for Environmental Responsibility - is among groups that expressed alarm over the permit application and its environmental implications.

The triangular tract known as the Loewenberg property has long been identified as an ideal public nature area if public funding can be obtained for it. Planners envision an urban wetlands accessible by walkways and footbridges that could serve as an environmental laboratory and passive recreational niche.

The plan would be set aside permanently if development is allowed to move forward. And Nonconnah Creek's function as a collector of environmentally harmful urban runoff would be enhanced.

The quality of the Memphis aquifer in the future is, of course, not entirely predictable. Recent findings about Nonconnah Creek only raise a cautionary flag.

It can be said with certainty, however, that future generations will benefit from a conservative approach toward development in its watershed and an effort not to repeat past mistakes.

Source:  
[http://www.commercialappeal.com/mca/todays\\_editorial/article/0,1426,MCA\\_537\\_2573900,00.html](http://www.commercialappeal.com/mca/todays_editorial/article/0,1426,MCA_537_2573900,00.html)

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More pic's from Dec. 2003:



Wetland flag (above) near open water... and more photos of the wetland.....



Wetland doing what it does - making clear clean water



Open meadow under power lines leading to...



.... nearby Lichterman Nature Center that could be connected.

A hidden jewel right there in East Memphis, begging to be saved.