

February 5, 2001

Ms. G. Leah Dever, Manager  
Oak Ridge Operations  
U.S. Department of Energy  
P.O. Box 2001  
Oak Ridge, TN 37831

**BY FACSIMILE**

Re: Oak Ridge Reservation land use planning and  
Boeing floodplain EA and FONSI

Dear Ms. Dever:

This is to follow up your comments at the January 30 meeting and provide additional thoughts on the Boeing floodplain EA and FONSI. These comments are provided on behalf of the Advocates for the Oak Ridge Reservation (AFORR) and the Tennessee Conservation League (TCL).

First, we appreciate your commitment to preparing an environmental impact statement in association with the upcoming comprehensive land use plan for the Oak Ridge Reservation. We look forward to learning more about the process and participating fully in the analyses and discussions. It remains somewhat unclear whether you intend to fold future consideration of the development of the ED-3 parcel into that comprehensive EIS, but we do appreciate your announcement that DOE would not move forward with that EA at this time.

Next, as you must know, we were disappointed in your decision to finalize the EA and FONSI for the Boeing floodplain parcel despite serious public concerns about the adequacy of analysis supporting that decision and the merits of the decision itself. After briefly reviewing the final EA and FONSI, we still have serious concerns about their compliance with the basic requirements of NEPA.

-- The EA does not analyze or evaluate the secondary or indirect impacts of the sale of the floodplain parcel as required by CEQ regulations. 40 C.F.R. §1508.8. Merely acknowledging that the sale will facilitate and lead to the development of 1500 homes on adjacent property falls far short of NEPA's requirement to take a "hard look" at such impacts.

-- Similarly, it is incorrect to contend that combining the direct and indirect impacts of the proposed action satisfies the CEQ requirement to consider cumulative impacts. The cumulative impact analysis is intended to bring OTHER past, present or reasonably anticipated future actions into the equation, including federal and nonfederal actions, not simply add direct and indirect impacts of the proposed action. 40 C.F.R. §1508.7.

-- In addition, the analyses in the final EA and FONSI appear to ignore many critical comments from the public and state or federal agencies such as the Tennessee Department of Environment and Conservation (TDEC) and the Tennessee Valley Authority (TVA). The EA appeared to address or include relatively insignificant correspondence from TVA and TDEC but declined to address or include their more serious, substantive concerns with the proposed transfer.

-- Finally, mitigation can, on occasion, reduce potential impacts to the point at which they are legitimately deemed insignificant. However, wishful thinking is not mitigation. Optimistic predictions that a developer "could" take precautions to protect floodplains, riparian habitat, wetlands or threatened and endangered species are of little value in analyzing such potential impacts. Such statements are patronizing at best, and potentially misleading, as they convey a false sense of concern and protection for the resources at stake. Indeed, such statements should be balanced with statements that developers "could" remove vegetation from the entire floodplain, eliminate riparian habitat, cause stormwater runoff that degrades wetlands and water quality, etc. In fact, we see no mitigation measures in the EA or FONSI other than those proposed to protect archeological sites.

Since DOE seems determined to sell this land to a private developer, it is not apparent that an adequate NEPA evaluation would affect your decision. The real shame, of course, is the further loss or erosion of public trust and confidence in DOE's management of public resources caused by this approach. In this instance, DOE clearly responded to pressure from private developers and ignored the public. We hope future decisions take the will of the public into account in determining the fate of public lands.

Sincerely,

Richard A. Parrish  
Senior Attorney

cc: Carol Borgstrom, DOE Office of NEPA Policy and Compliance  
Jennifer Fowler, DOE ORO Legal Counsel  
Katy Kates, DOE Realty Officer, Oak Ridge Reservation  
David Allen, DOE ORO NEPA Compliance Officer  
Larry Clark, DOE Oak Ridge Operations  
Dev Joslin, Advocates for the Oak Ridge Reservation  
Marty Marina, Tennessee Conservation League