BEFORE THE U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING

In re Designation of Certain Lands	)
Within the North Cumberland	)
Wildlife Management Area and the	)
Emory River Tracts Conservation	)
Easement, Anderson, Campbell, Morgan	)
and Scott Counties, Tennessee as	)
Unsuitable for Surface Coal Mining	)
Operations.	)

PETITION

Petitioner, the State of Tennessee , in accordance with section 522 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1272 ("SMCRA"), petitions the United States Department of the Interior, Office of Surface Mining ("OSM"), to designate as unsuitable for surface coal mining operations the area within 600 feet of all ridge lines lying within the North Cumberland Wildlife Management Area ("WMA") - comprised of the Royal Blue WMA, the Sundquist WMA, and the New River WMA (also known as the Brimstone Tract Conservation Easement) – and the Emory River Tracts Conservation Easement [hereinafter referred to as the "petition area"], encompassing approximately 67,326 acres. [1]

In 2007, the State of Tennessee completed an ambitious conservation project, referred to as "Connecting the Cumberlands," which resulted in the protection of new public lands that connect to the existing public lands of the Royal Blue WMA, Sundquist WMA, and Frozen Head State Park and Natural Area. The project, located in Scott, Campbell, Anderson, and Morgan Counties, provides public access rights on approximately 127,000 acres and is the largest conservation transaction in the state since the creation of the Great Smoky Mountains National

[1] A map of the petition area is included in Exhibit A.

Park in the 1930s. In Governor Bredesen's words, the project gave the state "a rare, once-in-a-lifetime opportunity to protect ecologically significant woodlands on a large scale and make them available for recreation [and] also help protect our air and water quality and wildlife habitat, as well as the natural beauty and cultural heritage that make our state uniquely Tennessee."[2] He further described the project as an investment that will support tourism and the economies of some of the state's most rural areas, "while at the same time ensuring this land is protected for the benefit of Tennesseans for generations into the future."[3]

SMCRA was enacted, in part, to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations" and to "assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations." 30 U.S.C. §1202(a), (b). Congress recognized that all surface mining operations, regardless of the permitting requirements and performance standards in place, inherently have adverse social, economic, and environmental effects.[4] Accordingly, Congress enacted section 522, specifically recognizing that in some circumstances "coal surface mining should give [way] to competing uses of higher benefit."[5] As the petition shows, protecting the conservation values and recreational values of the public lands for the benefit of generations to come is a "higher benefit" that should prevail over surface coal mining.

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[2] Press Release, Tennessee Department of Environment and Conservation, Bredesen Celebrates Historic Land Acquisition for Tennessee (Nov. 8, 2007), *available at* http:/www.state.tn.us/environment/news/release/2007/Nov/cumberlands.shtml.

[3] *Id.*

[4] *See* U.S.C.§ 1201(e) (finding that effective and reasonable regulation of surface coal mining operations will merely minimize "the adverse social, economic, and environmental effects of such mining operations").

[5] U.S. H.R. Rep. No. 95-218, at 94 (1977); *see also* Areas Unsuitable for Surface Coal Mining, 48 Fed. Reg. 41312, 41312 (Oct. 14, 1983).

Section 522(c) of SMCRA allows any person having an interest which is or may be adversely affected by surface coal mining to petition to have an area designated as unsuitable for surface coal mining operations. 30 U.S.C. §1272(c). The SMCRA regulatory program for Tennessee is set out at 30 C.F.R. Part 942. In addition, 30 C.F.R. Parts 942.762 and 942.764 incorporate by reference OSM's criteria and procedures for considering a petition to designate non-federal lands as unsuitable. Under section 522(a)(3), OSM has the discretion to designate an area as unsuitable if such operations will:

> A) be incompatible with existing State or local land use plans or programs;
>
> B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;
>
> C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or
>
> D) affect natural hazard lands in which such operations could substantially endanger life and property.

30 U.S.C. §1272(a)(3)(A)-(D).

Petitioner urges OSM to designate the petition area as unsuitable for surface coal mining operations based on the first two statutory criteria above because:

1) Surface mining operations in the petition area would be incompatible with the conservation goals of Tennessee's "Connecting the Cumberlands" project, as well as with various state land use plans, programs and strategies that govern and set goals for the lands within and downstream of the petition area, including Tennessee's Comprehensive Wildlife Conservation Strategy, the Management Plan for the Royal Blue WMA, the Management Plan for the Sundquist WMA, and the Tennessee State Recreation Plan. These plans have at their

core the preservation and improvement of wildlife habitat and recreational opportunities, and these goals would be seriously compromised by the inherent impacts of surface mining operations in the petition area; and

2) Surface mining operations in the petition area would significantly damage the natural systems and esthetic, recreational, cultural, and historic values of the ridge lines and their viewsheds that exist within these fragile lands, including the Cumberland Trail State Park, which traverses four counties within the petition area. The public is attracted to an intact landscape with the opportunities for hunting and wildlife viewing that such a corridor offers and surface mining in the petition area has the potential to destroy both the viewsheds and vital habitat for numerous sensitive species that exist in the petition area.

Although this petition does not otherwise discuss the criterion relating to the long-range productivity of a water supply, it is important to note that the State of Tennessee expressly recognized the protection of water quality in the New and Emory Rivers as one of the benefits of the "Connecting the Cumberlands" project. These rivers provide water for more than 27,000 Tennesseans in nine communities including Harriman, Kingston and Rockwood. [6]

Petitioner's Contact Information

1. Tennessee Wildlife Resources Agency
   Aubrey D. McKinney, Chief of Environmental Services
   Ellington Agricultural Center
   P. O. Box 40747
   Nashville, Tennessee 37204
   615-687-6577
   e-mail: Dave.McKinney@tn.gov

[6] *See* TDEC, North Cumberlands Acquisition; Public Benefits, *available at* http://tennessee.gov/environment/northcumb/benefits.shtml (last visited June 1, 2010).

2. Tennessee Department of Environment and Conservation
Paul Schmierbach
Environmental Program Manager
Knoxville Field Office
3711 Middlebrook Pike
Knoxville, Tennessee 37921
865-594-5529
e-mail: Paul.Schmierbach@tn.gov

Identification of the Petition Area

This petition seeks an unsuitability designation for all ridge lines lying within the North Cumberland WMA and the Emory River Tracts Conservation Easement ("Emory Tracts"). The North Cumberland WMA is the umbrella WMA created as a result of the 2007 "Connecting the Cumberlands" conservation project, consisting of the existing Royal Blue and Sundquist WMAs and the newly created New River WMA (also referred to as the Brimstone Tract). For clarity and ease of reference, this petition refers to the individual land units that comprise the North Cumberland WMA by their original or "unit" names—the Royal Blue WMA, the Sundquist WMA, and the New River WMA. The petition area includes approximately 600 feet on either side of the ridge lines within the North Cumberland WMA and the Emory River Tracts Conservation Easement encompassing approximately 67,326 acres in parts of four counties in Tennessee -- Anderson, Campbell, Morgan and Scott. The petition area is within the South Fork of the Cumberland, the Clear Fork of the Cumberland, and Upper Clinch watersheds, but does not include any areas where there currently is acid mine drainage to waters of the state. A Geographical Information Systems ("GIS") map of the petition area is attached to this petition as Exhibit A.

OSM's public records reveal that since 2005, the agency has issued numerous new mining permits for surface coal mining operations in the petition area. Further, the Tennessee Valley Authority ("TVA") still has under consideration a plan for managing its coal reserves underlying the Royal Blue WMA due to the increase in market demand for high-sulfur coal.[7] In 2003, TVA estimated that approximately 70 million tons of recoverable coal, including 28 million tons from surface mining and 42 million tons from deep mining, exist under the Royal Blue WMA.[8] In 2008, National Coal Corporation estimated the amount of recoverable coal beneath the Sundquist WMA to be at least 30 million tons.[9] These estimates, together with the number of surface mining permits already granted, as well as the mining infrastructure being put in place throughout the petition area, indicate ongoing and continued surface coal mining operations in the petition area for the foreseeable future.

Identification of Petitioner's Interests and Statement of How Surface Mining of the Area May Adversely Affect Those Interests

Petitioner, through the Tennessee Wildlife Resources Agency ("TWRA"), has full jurisdiction over the management, protection, propagation, and conservation of wildlife in Tennessee.[10] Toward these ends, TWRA manages lands and waters suitable for game, birds, fish and fur-bearing animal restoration, propagation, and protection, including the Royal Blue and Sundquist WMAs that comprise a portion of the North Cumberland WMA. Historically, surface mining within the New River watershed has adversely affected the Royal Blue and Sundquist

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[7] Tennessee Valley Authority, Notice of Intent, Environmental Impact Statement: Koppers Coal Reserve Management Plan, 68 Fed. Reg. 26,371 (May 15, 2003).
[8] *Id.* at 26,372.
[9] Dave Flessner, *Legislators debate higher taxes, controls as strip mining rebounds*, Chattanooga Times Free Press (April 7, 2008), *available at* http://www.timesfreepress.com/news/2008/apr/07/legislature-debates-higher-taxes-controls-strip-mi/?print.
[10] *See* Tenn. Code Ann. § 70-1-301.

WMAs through sediment loading, acid mine drainage and other impacts. Based upon recent trends at surface mining operations that have been fully regulated pursuant to the requirements of SMCRA, the impacts that would occur as a result of continued and renewed surface mining within the petition area can be expected to adversely affect the wildlife habitat within the New River watershed and adjacent areas through alterations of the soil and geologic structure, an elevated level of conductivity in surface water, noise, dust and vibration.

The cumulative impacts from past and current mining and, as discussed below, an expected increase in surface mining in the petition area will significantly impair wildlife habitat in the North Cumberland WMA through forest fragmentation, impacting pollution-sensitive species and the natural values of these wildlife corridors. TWRA's interests likewise would be threatened by damage to the recreational uses of the Royal Blue and Sundquist WMAs, both in terms of hunting opportunities and wildlife viewing. Consequently, surface mining in the petition area will adversely affect TWRA's management interests in protecting and propagating wildlife on these lands.

Petitioner, through the Tennessee Department of Environment and Conservation ("TDEC"), manages numerous state parks and state natural areas encompassing 175,000 acres across Tennessee. These include the Justin P. Wilson Cumberland Trail State Park ("CTSP"), the state's only linear park spanning 300 miles and traversing eleven counties in Tennessee, among them Anderson, Campbell, Morgan and Scott Counties, which are within the petition area.[11] TDEC, through its Division of Recreation Educational Services, is also responsible for providing assistance in the acquisition and conservation of land for recreational purposes, including the 2007 "Connecting the Cumberlands" project.

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[11] *See* TDEC , Tennessee State Parks, Justin P. Wilson Cumberland Trail State Park, *available at* http://tennessee.gov/environment/parks/CumberlandTrail.

Surface mining within the ridge lines of the North Cumberland WMA, created as a result of the "Connecting the Cumberlands" project, can be expected to significantly impair opportunities for public access and recreation within this unbroken core of protected land, which includes nearly 130,000 acres of majestic hardwood forests, mountains and streams. Surface coal mining operations in the CTSP, or within its viewscape, and other parts of the petition area could damage important natural systems and the cultural and esthetic values of these fragile lands, including various overlooks, viewsheds and gorges, thereby adversely affecting the public's experience of these important esthetic resources. TDEC's interests would therefore be threatened by damage to the viewscapes and recreational uses of the ridge lines in both the Cumberland Trail State Park and the North Cumberland WMA.

Allegations of Fact and Supporting Evidence

I. THE PETITION AREA SHOULD BE DESIGNATED UNSUITABLE FOR SURFACE COAL MINING OPERATIONS BECAUSE MINING IN THE AREA WOULD BE INCOMPATIBLE WITH EXISTING STATE OR LOCAL LAND USE PLANS OR PROGRAMS WITHIN THE MEANING OF 30 U.S.C. § 1272(a)(3)(A).

A. Surface Mining in the Petition Area is Incompatible with the State's Conservation Plan for this Area as Reflected in the 2007 "Connecting the Cumberlands" Conservation Project.

In 2007, Tennessee, in partnership with The Nature Conservancy and two conservation-oriented timber companies, acquired a mix of fee title and conservation easements to more than 127,000 acres of land.[12] Tennessee describes the acquisition as a "once-in-a-lifetime opportunity

[12] Tennessee Department of Environment and Conservation ("TDEC"), North Cumberlands Acquisition Fact Sheet, *available at* http://tennessee.gov/environment/northcumb/facts.shtml (last visited August 18, 2010). The conservation easements consist of 23,200 acres on the Brimstone tract and 18,875 acres on the Emory River tract. The State also acquired the timber rights to the Sundquist WMA's 75,000 acres of timber. *Id.* The State appropriated

to protect majestic woodlands on the Northern Cumberland Plateau that include some of the most important forests, mountains, streams and wildlife habitat remaining in North America. . . . The 'landscape scale' of this acquisition will . . . help preserve the purity of streams and rivers and provide a natural corridor for wildlife . . . ."[13] Further, "[o]ver the long term, establishing this unbroken core of protected land has the potential to enhance life in Tennessee through increased tourism, protection of unique forms of wildlife and their habitats, and opportunities for public access and recreation."[14] The Tennessee Senate recently passed a resolution extolling the virtues of the Cumberland Plateau and recognizing that its resources "represent valuable tourism assets which can, with proper stewardship, development, and management," contribute to local economies, as well as to the quality of life in the region.[15] Surface mining in the petition area is incompatible with this resolve and with Tennessee's goals for its 2007 "Connecting the Cumberlands" land acquisition.

As the name "Connecting the Cumberlands" reflects, the acquisition connects the newly acquired lands to the existing public lands of Frozen Head State Park and Natural Area, the Royal Blue WMA, and the Sundquist WMA to create a large expanse of unfragmented habitat.[16] The Cumberland Trail also traverses Frozen Head State Park and Natural Area and Royal Blue WMA, so the acquisition of this property provides an unbroken trail of approximately 90 miles through public lands that maintain "the visual esthetics for future generations of trail hikers." [17] The wildlife corridor that was created amounts to "300 square miles of protected forestland for

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$82 million out of a total estimated value of the project of $135 million. *Id.* The State's investment is "the largest of its kind in state history and the largest conservation appropriation by any one state in recent years." *Id.*

[13] TDEC, North Cumberlands Acquisition Fact Sheet, *available at* http://tennessee.gov/environment/northcumb/facts.shtml (last visited August 18, 2010).

[14] *Id.*

[15] Tennessee Senate Joint Resolution No. 980, May 5, 2010.

[16] Paul Kingsbury, *Connecting the Cumberlands*, The Tennessee Conservationist, January/February 2009, at 20 at 19, 22.

[17] Southern Cumberland Mountains: A TWRA Acquisition Priority, 2002, at 2.

black bear, elk, white-tailed deer, turkey and numerous migratory songbirds such as the cerulean warbler and the wood thrush."[18] The Nature Conservancy ranks this biologically rich area as the eighth most important place in the world.[19]

As the conservation easement documents indicate, one of the primary purposes of the easements is to protect the land's "Conservation Values," which include "native flora and fauna and the ecological processes that support them," "threatened and endangered animal species and other animals," "neotropical migrant songbirds," "wetland, riparian, and other aquatic habitats," and "biological diversity."[20] All forest management activities are required to be compatible with these purposes by emphasizing sustainable forestry principles, employing best management practices, and establishing "special management" or "conservation zones."[21] The easements establish these special conservation areas, including approximately 5,000 acres in the Brimstone tract that are predominantly ridge lines, to protect habitats and natural communities that support rare, threatened, or sensitive plant or animal species.[22] The easements also require that the grantor obtain certification of its forest management plan from the Forest Stewardship Council (FSC), or have an alternative program that meets FSC standards and that is mutually agreed upon by the grantor and the State.[23]

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[18] Paul Kingsbury, *Connecting the Cumberlands*, The Tennessee Conservationist, January/February 2009, at 19.
[19] TDEC North Cumberlands Acquisition; Public Benefits, *available at* http://tennessee.gov/environment/northcumb/benefits.shtml (last visited August 18, 2010).
[20] Sustainable Forestry Conservation Easement, "Brimstone Property" at 7; Conservation Easement, Emory Tract at 1-3.
[21] Sustainable Forestry Conservation Easement, "Brimstone Property" at 19, 23 (discussing "Conservation and Economic Objectives" and "Mandatory Forest Management Provisions"); Conservation Easement, Emory Tract at 14, 20 (discussing "Compliance with Forest Management Objectives" and "Special Management Zones" or "Conservation Zones").
[22] Sustainable Forestry Conservation Easement, "Brimstone Property" at 24 (discussing "Forest Management Exclusion Zones"); Conservation Easement, Emory Tract at 6, 20 (discussing "Special Management Zones or Conservation Zones").
[23] Sustainable Forestry Conservation Easement, "Brimstone Property" at 20-21; Conservation Easement, Emory Tract at 20-21.

Thus, the very purpose and vision of the State's "Connecting the Cumberlands" land acquisitions are to ensure the integrity and protection of these public lands on a landscape scale and to ensure that timbering is done on a sustainable basis, lessening forest fragmentation. The Emory River tract consists of approximately 18,800 acres and is the subject of the conservation easement between The Nature Conservancy, which owns the surface rights, and the State of Tennessee. Clearly, the State's policy for these public lands is to preserve them in large blocks in order to protect habitat and diversity and to avoid landscape fragmentation.

While the sustainable timbering practices required by the easements can be carried out consistently with the State's wildlife conservation plans, surface mining in the petition area cannot. Surface mining, together with the clear-cutting of forest that precedes it, directly damages wildlife and wildlife habitat within, surrounding, and downstream from the mined areas. Surface mining also fragments forests, directly conflicting with one of the State's explicit goals for the newly acquired areas. Such impacts occur even when mining is carried out in full compliance with SMCRA's permitting requirements and performance standards.

Surface mining operations in the petition area are also inconsistent with the State's goals of creating and enhancing recreational opportunities. The Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") stressed that the project would "increase recreational opportunities such as hunting and fishing, as well as hiking, biking, horseback riding and wildlife viewing."[24] The State also repeatedly emphasized that all of the more than 127,000 acres involved in the project would be open to the public.[25] The acquisition

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[24] Press Release, Bredesen Celebrates Historic Land Acquisition For Tennessee, 8 Nov. 2007, *available at* http://tn.gov/environment/news/release/2007/Nov/cumberlands.shtml.

[25] *See, e.g.*, *id.* While the conservation easements allow for some closure in areas of active forest management where public safety would be threatened, they ensure that no more than 10% of the protected area will be closed at any time, once again indicating the importance the State places on recreation. Sustainable Forestry Conservation Easement, "Brimstone Property" at 29-30; Conservation Easement, Emory Tract at 26.

also directly advances the State's strategy, set forth in the Tennessee State Recreation Plan and "Tennessee 2020," a ten year plan for the future of Tennessee's parks and landscapes, of creating a Recreation Development Corridor in the Cumberland Plateau.[26] Similarly, TWRA's interests in promoting the recreational uses of the Royal Blue and Sundquist WMAs for hunting and wildlife viewing will be enhanced by this new project. Thus, the impacts of surface mining in the petition area, such as damage to scenic resources and viewscapes, noise, dust, and vibration, would all directly conflict with the State's plans for protecting the area for public recreation.

Finally, surface mining would undermine the State's plans for sustainable economic development. The State made clear that the "Connecting the Cumberlands" acquisition would not only preserve valuable natural lands but would also provide *long-term* support for local economies.[27] The keys to the State's long-term, sustainable economic development plans are preservation of the land's natural and ecological values that attract tourism[28] and management of forests for the permanent provision of valuable products and local jobs.[29] Unlike tourism and sustainable forestry, surface mining provides only short-term benefits, siphons the majority of profits out of the area, and leaves local communities with very few, if any, post-mining economic

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[26] *See* TDEC, The Tennessee State Recreation Plan 2003-2008 at 28-31 (Feb. 2004), *available at* http://tn.gov/environment/recreation/pdf/rec_plan_final.pdf; TDEC, Tennessee 2020; Vision for Parks, People & Landscapes, at 105-06 (31 March 2010), *available at* http://www.state.tn.us/environment/recreation/plan/.

[27] Press Release, Bredesen Celebrates Historic Land Acquisition For Tennessee, November 8, 2007, *available at* http://tn.gov/environment/news/release/2007/Nov/cumberlands.shtml ("We were able to . . . make investment that will support tourism and the economies of some of our most rural areas, while at the same time ensuring this land is protected for the benefit of Tennesseans *for generations into the future*.") (emphasis added).

[28] TDEC North Cumberlands Acquisition; Public Benefits, *available at* http://tennessee.gov/environment/northcumb/benefits.shtml (last visited August 18, 2010) ("the diversity of the Cumberland Mountains" is "a draw for hikers, bikers, camping and wildlife viewing"); TDEC, North Cumberlands Acquisition Fact Sheet, *available at* http://tennessee.gov/environment/northcumb/facts.shtml (last visited August 18, 2010) ("[E]stablishing this unbroken core of protected land has the potential to enhance life in Tennessee through increased tourism...").

[29] TDEC North Cumberlands Acquisition; Public Benefits, *available at* http://tennessee.gov/environment/northcumb/benefits.shtml (last visited August 18, 2010) ("Working lands provide local jobs"); TDEC, North Cumberlands Acquisition Fact Sheet, *available at* http://tennessee.gov/environment/northcumb/facts.shtml (last visited August 18, 2010) ("Conservation easements present an opportunity to protect not only the properties themselves but also the economic benefits they generate for local communities as working forests.").

opportunities.[30] Surface mining damages the natural and scenic values that attract tourism and destroys the forests that would provide a sustainable timber harvest.[31] For all of the above reasons, surface coal mining conflicts with the State's vision and plans for the lands involved in the "Connecting the Cumberlands" project.

B. Surface Mining in the Petition Area is Incompatible with the State Management Plans for Wildlife Management Areas.

Surface mining in the petition area is incompatible with the state's plans for its Wildlife Management Areas. Under Tennessee law, a "wildlife management area" is a specific area established "for the intensive management of both habitat and wildlife species for optimum enhancement and use by both consumptive and nonconsumptive users."[32] Although no comprehensive management plan has yet been developed for the new North Cumberland WMA, the Management Plan for the Royal Blue Wildlife Management Area ("Royal Blue Plan") currently provides guidance for a large portion of the WMA. As adopted in 1992, the Royal Blue Plan provides that "proper wildlife management" is the "highest priority."[33] While the Royal Blue Plan notes that mining has occurred and is envisioned to continue in the future,[34] it

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[30] *See, e.g.,* Mountain Association for Community Economic Development, The Economics of Coal in Kentucky: Current Impacts and Future Prospects, at 6 (25 June 2009) ("The top coal-producing counties have some of the highest poverty rates in the region. . . So while mining employment is extremely important as a source of income for individuals in coal-producing counties, the benefits of these jobs do not translate into prosperity for the region."). A recent study in Kentucky found that the coal industry actually costs the State nearly $115 million per year more than it brings in. Mountain Association for Community Economic Development, The Impact of Coal on the Kentucky State Budget, at 1 (25 June 2009), *available at* http://www.maced.org/coal/.

[31] Recognizing the damage wrought by surface coal mining on forests, both conservation easements prevent such mining by the Grantor. Sustainable Forestry Conservation Easement, "Brimstone Property" at 31. Conservation Easement, Emory Tract at 10.

[32] Tenn. Code Ann. § 70-1-101 (42).

[33] Royal Blue Plan at 32.

[34] *Id.* at 6, 23. Note, however, that at the time of the 1992 Plan there was only limited demand for the area's high-sulfur coal. *Id.* at 8. The development and installation of scrubbers to remove sulfur dioxide from coal-fired power plant emissions regulated under the Clean Air Act has increased the demand for such coal, meaning that mining could potentially occur at levels much higher than could have been envisioned by the Plan. *See, e.g.,* Dave Flessner,

also makes clear that mining must be environmentally sound and compatible with the wildlife-centered uses for which the WMA was created.[35] The Royal Blue Plan notes that mining should be limited to situations in which it can be done so as to ensure that wildlife habitat and water quality are not adversely impacted.[36] For numerous reasons discussed below, mining in the North Cumberland WMA cannot meet these requirements.

Surface mining operations in the petition area will impair human recreational and wildlife-viewing opportunities in the WMA. The Royal Blue Plan's list of goals for the WMA includes providing opportunities for "wildlife enjoyment," "plant and animal restoration," "non-wildlife associated recreation" and protection and management of "threatened and endangered flora and fauna."[37] Similarly, the mission statement for the Sundquist Wildlife Management Area ("Sundquist Plan"), provides that TWRA has a duty to manage and operate the surface area for "Conservation and Recreation," in a way that precludes development, sustains "a natural hardwood forest through time" by prohibiting "conversion to plantations" and conserving "biological diversity," and provides public recreational opportunities. [38] While both the Royal Blue and Sundquist WMAs include timbering in their management plans, it should be noted that neither plan allows clear-cutting on the massive scale that occurs with surface mining. Both plans seek to protect habitat through controlled timber harvest and progressive forestry programs.[39]

As discussed below in Part II, impacts of surface mining will have obvious adverse effects on wildlife enjoyment and wildlife viewing. Surface mining operations will degrade the

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Legislators Debate Higher Taxes, Controls as Strip Mining Rebounds, Chattanooga Times Free Press (April 7, 2008).

[35] Royal Blue Plan at 32.

[36] *Id.* at 4-5.

[37] *Id.* at 4.

[38] Sundquist Plan at 4.

[39] *See* Royal Blue Plan at 13, 25; Sundquist Plan at 4-5.

scenic resources of the WMA and result in noise and dust, further lowering the area's recreational value.[40] OSM has acknowledged the adverse effects of dust and noise on recreational use and the "correlation between recreational satisfaction and high scenic quality for outdoor recreation."[41] Thus, because surface mining operations in the North Cumberland WMA will significantly damage the wildlife-and-recreation-based uses of the WMAs, such operations would be incompatible with the State's goals for the WMAs and should therefore be declared unsuitable.

C. Surface Mining in the Petition Area is Incompatible with the State Plans for the Cumberland Trail, Tennessee Greenways and Trails Plan, and the Tennessee State Park Plans.

Information since OSM's January 13, 2006 Statement of Reasons (2006 SOR) on the petition filed by private parties further demonstrates that surface coal mining operations in the vicinity of the Smoky Mountain segment of the Cumberland Trail would conflict with the protection afforded the Cumberland Trail State Park. In 2008, the Greenways and Trails Advisory Council reiterated the national significance of the Cumberland Trail State Scenic Trail and State Park and emphasized that the continued development and eventual completion of the

[40] Flat Fork Statement of Reasons at 10 ("[S]urface coal mining operations would diminish the esthetic values of proposed overlooks."); *Id.* at 15 ("[S]urface coal mining operations would be expected to affect the visual and noise quality of the . . . [a]rea, thus impacting the visitor's recreational experience."); Fall Creek Falls Statement of Reasons, 65 Fed. Reg. at 39183 (acknowledging that "noise, dust, and vibration" are inherent impacts of surface mining operations in compliance with SMCRA); Fern Lake Watershed Statement of Reasons, 61 Fed. Reg. 49793, 49796 (finding that surface mining degrades visual quality even in non-pristine areas that have been subject to earlier surface mining).

[41] Flat Fork Statement of Reasons at 15. *See* Fall Creek Falls Statement of Reasons, 65 Fed. Reg. at 39187 (impacts of dust and noise from surface coal mining operations in or near the Park would impair recreational use of Park land and could have a negative impact on Park visitation, affecting the economic viability of the Park and the surrounding area).

Cumberland Trail remains a priority of the Plan.[42] Surface mining would frustrate the goals of the Tennessee Greenways and Trails Plan and conflict with the management objectives for Tennessee State Parks.

The purpose of the Greenways and Trails Plan is to create an interconnected, accessible network of greenways and trails across Tennessee, with the Cumberland Trail as the "backbone" of this system.[43] Tennessee law requires that the Cumberland Trail, as a state scenic trail, be located so as "to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological or cultural qualities of the areas through which such trails may pass."[44] Because the Cumberland Trail is also a state park, Tennessee law requires that it "shall be preserved in a natural condition so far as may be consistent with its human use and safety, and all improvements shall be of such character as not to lessen its inherent recreational value."[45] Likewise, the park must be managed consistently with the mission of Tennessee State Parks, which is "[t]o preserve and protect, in perpetuity, [the] unique examples of natural, cultural, and scenic areas," represented by the parks.[46]

As explained below, surface mining in the petition area would harm the scenic, historic, natural, ecological and cultural qualities of the areas through which the Cumberland Trail passes. Any such impacts would also be in direct conflict with the State's mission to preserve and protect in perpetuity both the resources of the Cumberland Trail State Scenic Trail and State Park, as well as the public's recreational uses of the North Cumberland WMA. This includes

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[42] 2008 Tennessee Greenways and Trails Plan at 30, *available at* http://www.state.tn.us/environment/recreation/plan/gt_plan2008.pdf.
[43] 2001 Tennessee Greenways and Trails Plan at 7-8, *available at* http://www.tennessee.gov/environment/recreation/pdf/5_Greenways_Plan.pdf.
[44] Tenn. Code Ann. § 11-11-104(1).
[45] Tenn. Code Ann. § 11-3-102.
[46] Mission Statement, Tennessee State Parks Strategic Direction: a Vision for the Future (Aug. 2005), *available at* http://www.state.tn.us/environment/parks/pdf/StrategicDirect.pdf.

protection of at least two rare floral species found in the North Cumberland WMA. The Canada lily (*Lilium canadense*) occurs at both Royal Blue and Sundquist WMAs and is state-listed as threatened.[47] The Ozark bunchflower (*Melanthium woodii*) occurs about 500 feet down slope of the ridge line at Royal Blue WMA within a moist ravine. That species is state-listed as endangered, and the occurrence at Royal Blue WMA represents one of only nine known occurrences in Tennessee.[48] Within the same ravine as the Ozark bunchflower, there is an occurrence record of the state-threatened leatherleaf meadowrue (*Thalictrum coriaceum*). There are eight known occurrences in Tennessee, but four are considered historical (not observed within the last 25 years).[49]

Because SMCRA's permitting requirement's and performance standards do not provide sufficient protection to these resources, mining in the vicinity of the Trail would be incompatible with the Tennessee Greenways and Trails Plan as well as the enabling legislation and mission statement for Tennessee State Parks.

D. Surface Mining in the Petition Area is Incompatible with Tennessee's Comprehensive Wildlife Conservation Strategy.

Mining in the petition area is incompatible with Tennessee's Comprehensive Wildlife Conservation Strategy ("CWCS"), also sometimes referred to as the State Wildlife Action Plan ("SWAP").[50] The primary goal of the CWCS is to prevent nongame wildlife within the state

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[47] Tennessee Department of Environment and Conservation, Natural Heritage Program (2010), Tennessee Natural Heritage Inventory Database, Nashville, Tennessee.
[48] *Id.*
[49] *Id.*
[50] Congress required each state to complete a Comprehensive Wildlife Conservation Strategy to ensure that state conservation programs funded under the federal "State Wildlife Grants Program" are designed to maximize benefits to nongame wildlife. TWRA, "Tennessee's State Wildlife Action Plan," *available at* http://www.tennessee.gov/twra/cwcs/tncwcs2005.pdf and http://www. tennessee.gov/twra/cwcs/tncwcs2005app.pdf (last visited September 16, 2010).

from declining to the point of endangerment.[51] The plan proceeds through a number of steps before ultimately arriving at a set of specific "priorities for conservation action."[52] First, the CWCS categorizes habitat across the state based on the value of the habitat to those species deemed to have the greatest conservation need ("GCN" species). Habitat value is ranked separately for terrestrial, aquatic and subterranean species.

Second, the CWCS assesses "priority problems" for GCN species occurring within particular terrestrial, aquatic and subterranean regions within the state. Finally, after exploring the primary sources of stress impacting imperiled species in the major regions of the state, the CWCS identifies the conservation actions that are likely to be most effective in addressing the priority problems across the state. The CWCS describes some of the GCN species in the petition area that would be harmed as a result of surface mining in the petition area. The ridge lines of this petition area unite the North Cumberlands and provide a contiguous corridor for these animals.

Continued surface mining within the petition area would be incompatible with several of the CWCS's priority conservation actions, as determined by the process described above. According to the CWCS, much of the habitat within the petition area is of 'very high' and 'high' importance to the 'first tier' of terrestrial and aquatic GCN species, respectively.[53] Further, the CWCS identifies coal mining activities as a particularly problematic source of habitat destruction in the state's Cumberland region, which encompasses the petition area.[54] The CWCS states, for

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[51] *Id.*
[52] CWCS at 30.
[53] The CWCS categorizes habitat across the state into four classes: 'Very High', 'High', 'Medium' and 'Low.' *Id.* at 82-83, 88, 92 (Maps 7 and 11). "First tier" species are those defined as wildlife by Tennessee law, excluding federally listed and game species. *Id.* at 44.
[54] *Id.* at 118-119.

example, "construction of roads and other infrastructure necessary for access to coal mines…can be very damaging to terrestrial habitats."[55]

To combat the damaging effects of surface mining on terrestrial and aquatic habitat and GCN species, the CWCS identifies specific statewide priority conservation actions. Significantly, the top two strategies for abating the effects of incompatible mining practices are: 1) "Propose/support state legislation urging the federal Office of Surface Mining to designate critical units of aquatic, subterranean, and terrestrial habitats as 'lands unsuitable for mining'"; and 2) "Encourage the federal Office of Surface Mining to designate critical units of aquatic, subterranean, and terrestrial habitats as 'lands unsuitable for mining' under current federal policy guidelines."[56] Therefore, the CWCS finds that preventing surface mining by designating the most valuable habitats in the state – such as the petition area – as "lands unsuitable for mining" is the best action for combating mining's serious adverse impacts on these habitats and GCN species.

It follows that allowing further surface mining in the petition area would be incompatible with the CWCS. OSM dismissed this allegation in 2006 by improperly accusing the private petitioners of misstating the CWCS's first proposed conservation action.[57] OSM cited the abbreviated description of the proposed conservation action used in Table 65 to support this assertion. However, the petitioners' characterization of the proposed conservation action was drawn from the "full description" contained in Appendix F, which states, "Propose/support state legislation urging the federal Office of Surface Mining to designate critical units of aquatic,

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[55] *Id.* at 119.
[56] http://www. tennessee.gov/twra/cwcs/tncwcs2005app.pdf at Appendix F, referenced at 147-71.
[57] 2006 SOR at 28-29.

subterranean, and terrestrial habitats as 'lands unsuitable for mining.'"[58] As such, OSM's rejection of the private petitioners' allegation was based on an incomplete reading of the CWCS.

II. OSM SHOULD DESIGNATE THE PETITION AREA AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS BECAUSE SUCH OPERATIONS WOULD AFFECT FRAGILE OR HISTORIC LANDS, RESULTING IN SIGNIFICANT DAMAGE TO IMPORTANT HISTORIC, CULTURAL, SCIENTIFIC, AND ESTHETIC VALUES AND NATURAL SYSTEMS, WITHIN THE MEANING OF §522(a)(3).

The ridge lines of the petition area are renowned for their globally significant natural resources. The petition area lies within the larger Cumberland Plateau region, which extends over 450 miles from northern Alabama to western West Virginia. Widely considered one of the most biologically rich regions on earth, the Cumberland Plateau contains the longest hardwood-forested plateau in the world.[59] According to The Nature Conservancy, the plateau is home to countless unique species "found nowhere else."[60] The Tennessee portion of the Cumberland Plateau, in particular, is renowned for its biodiversity and expanses of unbroken forest. According to the Tennessee Department of Environment and Conservation ("TDEC"), it is the "Heart of the Cumberlands" and one of the most ecologically significant places in the world.[61] Because of these and other values, the petition area fits within the "fragile lands" criterion for designation as lands unsuitable for surface mining.

The Department of the Interior's SMCRA regulations define the term 'fragile lands' as:

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[58] Each page of the relevant tables clearly directs the reader to Appendix F for the "full description" of the proposed conservation action. CWCS at 147-78, Tables 62-67.

[59] The Nature Conservancy, Tennessee: A Big Deal to Connect the Cumberlands, *available at* http://www.nature.org/wherewework/northamerica/states/tennessee/features/art23012.html (last visited June1, 2010); The Nature Conservancy, Northern Cumberlands, *available at* http://www.nature.org/wherewework/northamerica/states/tennessee/preserves/art10172.html (last visited June1, 2010).

[60] *Id.*

[61] Tennessee Department of Environment and Conservation, Connecting the Cumberlands through the North Cumberlands Acquisition, *available at* http://tennessee.gov/environment/northcumb/ (last visited August 18, 2010).

> areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.[62]

"Fragile lands" exist within the petition area and would be significantly damaged by surface coal mining operations. The petition area contains valuable habitat for priority migratory songbirds, as well as species that Tennessee has ranked as being in the greatest need of conservation ("GNC species"). Surface mining in the petition area would result in significant harm to this habitat, and the species that depend on it, by fragmenting large tracts of contiguous forest and denuding ridgetops in the petition area.

Further, as the 2007 "Connecting the Cumberlands" conservation project recognized, the lands that constitute the petition area have exceptional value as environmental corridors containing a concentration of ecologic and esthetic features, and as areas of recreational value due to their high environmental qualities. The Cumberland Trail State Park, which bisects the petition area, and the Big South Fork NRRA located downstream of the petition area not only provide recreational benefits but are also historically and culturally significant. For all these reasons these lands qualify as fragile lands within the meaning of §522(a)(3).

The adverse environmental effects and risks associated with surface mining in the petition area could significantly affect these fragile lands in and downstream of the petition area and result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems, within the meaning of §522(a)(3). As OSM has recognized, the inherent impacts of mining include the removal of wildlife habitat within the mining area, alterations of

[62] 30 C.F.R. § 762.5.

the soil and geologic structure, elevated levels of conductivity in surface water, and increased sedimentation to the receiving streams.[63]

A. Surface Mining in the Petition Area Would Damage Important Environmental Corridors and Areas That Are of Recreational Value Due to High Environmental Quality.

As set forth in OSM's SMCRA regulations, 'fragile lands' also include: (1) "environmental corridors containing a concentration of ecologic and esthetic features"' and (2) "areas of recreational value due to high environmental quality."[64] The ridge lines of the petition area unite the North Cumberlands and provide numerous examples of both.

As discussed more fully below, the State's 2007 "Connecting the Cumberlands" acquisition recognized that the public lands on the Cumberland Plateau, including those in the petition area, have exceptional recreational values and a concentration of ecologic and esthetic features, such as corridors of unfragmented forests, scenic vistas, and superb biological diversity.[65] For instance, the Royal Blue and Sundquist WMAs serve as a corridor of vital habitat for priority songbirds; therefore, they offer unique opportunities for bird watching and are popular destinations among birdwatchers.[66] In fact, the American Bird Conservancy has designated Royal Blue WMA as one of its Globally Important Bird Areas in Tennessee.[67] The public lands that constitute the petition area are also popular destinations for a variety of outdoor

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[63] *See, e.g.*, Statement of Reasons on Fall Creek Falls Petition, 65 F.R. 39178, 39183 (June 23, 2000).
[64] 30 C.F.R. § 762.5.
[65] *See* TDEC North Cumberlands Acquisition; Public Benefits, *available at* http://tennessee.gov/environment/northcumb/benefits.shtml (last visited August 18, 2010); *see also* Sustainable Forestry Conservation Easement, "Brimstone Property" at 7, 13.
[66] *See* Scott County, Sundquist WMA, *available at* http://www.scottcounty.com/?q=node/9 (last visited September 12, 2010); Scott County, Royal Blue WMA, *available at* http://www.scottcounty.com/?q=node/8 (last visited September 12, 2010).
[67] American Bird Conservancy, Globally Important Bird Areas in Tennessee, *available at* http://www.abcbirds.org/abcprograms/domestic/sitebased/iba/tennessee.html (last visited June 4, 2010).

recreational activities, including hiking, biking, fishing, camping, and wildlife viewing.[68] Because of its recreational values, the petition area is an important source of tourism-generated income for the State of Tennessee and the four counties that contain these lands.[69]

Surface mining in the petition area would interfere with these recreational opportunities. It would diminish wildlife viewing opportunities by destroying the valuable habitat upon which these animals thrive. The visual and noise impacts of surface mining operations would also deplete the scenic quality of the petition area, reducing its appeal as a place for hiking, camping, wildlife viewing, and fishing. The negative impacts of surface mining on water quality of streams in the petition area could further deter hikers and campers, who use these waters for drinking water and for fishing. Surface mining operations could further conflict with these activities because public safety considerations will require that areas near surface coal mining operations be closed to recreational uses.

OSM's regulations state clearly that "[d]amage does not have to be permanent or irreparable in every instance to be significant."[70] Indeed, the D.C. District Court rejected OSM's attempt in its 1983 regulations to include an irreparable harm standard in the definition of fragile lands.[71] Thus, even short- to medium-term impacts of surface mining operations on such values is a factor that warrants designation, as OSM has since recognized in other lands unsuitable designations.[72] Accordingly, OSM cannot lawfully reject allegations of harm in the

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[68] *See* TDEC North Cumberlands Acquisition; Public Benefits, *available at* http://tennessee.gov/environment/northcumb/benefits.shtml (last visited August 18, 2010).

[69] *See* TDEC, North Cumberlands Acquisition Fact Sheet, *available at* http://tennessee.gov/environment/northcumb/facts.shtml (last visited August 18, 2010) (recognizing the petition areas' recreational value for the state and local economies).

[70] 52 Fed. Reg. 18,792.

[71] *In re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144 (D.D.C. 1984).

[72] *See* Statement of Reasons on Flat Fork LUM petition (1990) at 13 (determining that surface coal mining operations within the petition area would adversely affect the fragile lands in terms of esthetic resources, even though impacts were "short to medium term."); *see also* Statement of Reasons on Fall Creek Falls petition, 65 F.R. 39178, 39187 (June 23, 2000) (designating lands unsuitable because surface mining could cause "significant damage

current petition on the highly theoretical basis that reclamation may eventually alleviate that harm.

In addition, surface mining in the petition area will adversely impact the recreational value of the Smoky Mountain segment of the Cumberland Trail, which traverses lands in the vicinity of significant coal reserves. The Cumberland Trail is a 300-mile historical trail celebrating the heritage of Tennessee.[73] It was designated a State Scenic Trail in 1971 and a State Park in 1998. Notably, in evaluating a petition to designate lands as unsuitable, OSM is specifically required to "consider...areas adjoining...Scenic Trails designated under Tenn. Code Ann. §11-11-101."[74] More recently, the State has recognized the Cumberland Trail as reflecting the essence and spirit of the area by designating the Cumberland Trail the official Millennium Legacy Trail for Tennessee.[75] As discussed above, in 2008, the Tennessee Greenways and Trails Advisory Council emphasized the national significance of the Cumberland Trail State Scenic Trail.[76]

The Smoky Mountain segment of the Cumberland Trail begins at Cove Lake State Park and traverses the heart of the Cumberland Mountains, roughly bisecting the public lands in the petition area. The Cumberland Trail not only provides positive economic benefits to the local communities it passes through, but also provides outstanding opportunities for Tennesseans to explore and enjoy the unique natural, scenic, and cultural qualities of the Cumberland Plateau.

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to the important cultural values of the Park, *including recreational, educational and religious activities*" and could cause significant damage to important esthetic values of the Park, adversely affecting recreational experience of visitors to the Park) (emphasis added).

[73] 2001 Tennessee Greenways and Trails Plan at 7-8, *available at* http://www.tennessee.gov/environment/recreation/pdf/5_Greenways_Plan.pdf.

[74] 30 C.F.R. § 942.762.

[75] 2001 Tennessee Greenways and Trails Plan at 10-11, *available at* http://www.tennessee.gov/environment/recreation/pdf/5_Greenways_Plan.pdf.

[76] *Id.* at 20.

The potential noise, water, and air pollution from surface mining in the petition area would significantly diminish the esthetic and recreational values of the Cumberland Trail, obscuring scenic vistas and impairing water quality within the nearby rivers and streams that are used by hikers and campers as a supply of potable water. Further, rock and debris from blasting, and potential landslides from mining sites and haul roads, could present significant hazards to recreational users.

SMCRA's normal permitting procedures, including the joint review provision of §522(e)(3) and the 300-foot buffer requirement of §522(e)(5), do not provide sufficient protection for the unique resources of the Cumberland Trail. It is worth reiterating that, in the Fall Creek Falls Statement of Reasons, OSM noted that impacts on the Fall Creek Falls State Park resulting from mining outside the park would include: "fugitive dust and noise," "visual impacts," and impacts to the "natural systems, ecologic resources, cultural resources, and esthetic values of the park."[77] In that case, OSM found that such impacts would "impair the recreational use of Park land" and " have a negative impact on Park visitation, thus affecting the economic viability of the Park and the surrounding area."[78] OSM further found that these impacts would be in "direct conflict" with the Park's mission.[79] Indeed, in considering the lands unsuitable petition, OSM specifically rejected the argument that the 300-foot buffer requirement was sufficient to protect Fall Creek Falls' recreational values from the impacts of surface coal mining.[80]

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[77] Statement of Reasons on Fall Creek Falls petition, 65 F.R. 39178, 39187 (June 23, 2000).
[78] *Id.*
[79] *Id.*
[80] *See id.*

OSM also saw fit to designate the Flat Fork watershed adjacent to Frozen Head State Park, in part to protect the unique resources of that public park.[81] There, the Director found that surface coal mining outside the park's boundaries would lead to "alteration of water chemistry and increased sedimentation" and adverse effects on the park's designated overlooks, all of which would be incompatible with the park's mission "to protect and preserve the natural resources within the park."[82] OSM's designation of lands outside these state parks in order to protect these public resources shows that SMCRA's safeguards were not considered sufficiently protective of park lands.[83]

The area surrounding the Smoky Mountain segment of the Cumberland Trail contains the very same threats that led to the Fall Creek Falls and Flat Fork designations. Any one of the variety of impacts that have been shown to occur despite full compliance with SMCRA could damage the "scenic, historic, natural, ecological, geological or cultural qualities," which the designation as a state scenic trail and state park seeks to maximize.

Mining within portions of the Royal Blue WMA would also detract from the recreational value of the Interstate 75 corridor, a popular scenic drive for tourists as it bisects the Royal Blue WMA. As OSM recognized in its Statement of Reasons granting the Flat Fork lands unsuitable petition, scenic overlooks from outside and within a petition area are esthetic values that qualify as fragile lands. Further, surface coal mining operations can significantly damage such esthetic values, a factor that weighed in favor of designating the entire Flat Fork watershed as unsuitable

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[81] Statement of Reasons for Petition to Designate Certain Lands in the Flat Fork Watershed, Tennessee, as Unsuitable for Surface Coal Mining Operations (24 April 1990).

[82] *Id.* at 9-10.

[83] Undoubtedly both the Fall Creek Falls and the Flat Fork designations were made assuming that OSM would follow its own regulations implementing §522(e).

for surface mining.[84] The views from overlooks along Interstate 75 similarly constitute fragile lands that could be significantly damaged by surface mining in the petition area.

B. Surface Mining in the Petition Area Would Damage Important Historic and Cultural Values.

As defined by the Department of the Interior, the phrase 'historic lands' means "areas containing historic, cultural, or scientific resources."[85] The petition area and downstream areas contain all three, and surface mining in the petition area would damage these important resources.

In its 2006 SOR, OSM criticized the private parties' allegation regarding the cultural and historic significance of the petition area by asserting that most of the discussion referred to the Cumberland Trail State Park and that this resource already receives sufficient protection under SMCRA.[86] For the reasons discussed in the previous section, SMCRA and its regulations are not sufficient to protect the Trail from the negative impacts of surface mining. In addition, it is important to note that since 2005, the Trail has gained national significance, as well. It is the lynchpin of the Great Eastern Trail, a new long-distance hiking trail that will run from the Alabama-Florida state line to New York, furthering the original vision of a network of trails across the entire Appalachian region.[87] The petition area's value as a place of historic, scientific, and cultural resources is further evidenced by the proposal to federally designate the Cumberland Plateau region as a National Heritage Corridor.[88] Finally, since the prior petition, the State of Tennessee has recognized lands within the petition area as containing important historic, cultural, and scientific values, as a result of

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[84] Statement of Reasons on Flat Fork LUM petition, at 13 (1990).
[85] 30 C.F.R. § 762.5.
[86] 2006 SOR at 19.
[87] *See* The Cumberland Trail Conference Guide to the Cumberland Trail, *available at* http://www.cumberlandtrail.org/ (last visited September 20, 2010).
[88] The Alliance for the Cumberlands, *The Cumberland Plateau Heritage Corridor: Feasibility Study and Assessment of Impacts for National Heritage Corridor Designation* (2006), *available at* http://www.tennessee.gov/environment/recreation/cumberlandplateau.pdf.

Cumberlands" acquisition, the largest of its kind in Tennessee since the creation of the Great Smoky Mountains National Park.

CONCLUSION

For the reasons set forth above, the State of Tennessee respectfully requests that:

1. The petition area be designated as unsuitable for surface mining operations; and

2. No permit be issued for surface mining operations in the petition area while this petition is pending.

FOR THE PETITIONER THE STATE OF TENNESSEE:

Date: 9-28-10

ROBERT E. COOPER, JR.
Attorney General and Reporter

Date: 9/28/10

ELIZABETH P. McCARTER
Senior Counsel
Office of the Attorney General and Reporter
Environmental Division
P. O. Box 20207
Nashville, Tennessee 37202
(615) 532-2582
lisa.mccarter@ag.tn.gov

Date: 9/29/10

PHIL BREDESEN
Governor
State of Tennessee