

# **Preliminary Injunction Explained**

**July 17, 2002**

By now I hope you have heard the good news that Judge Todd Campbell issued the Preliminary Injunction on July 17. This means TDOT must cease all activity on the Pellissippi Parkway Extension until CAPPE's motion calling for a full Environmental Impact Statement can be heard in court. The date for that hearing has not yet been set. It could be as soon as three months or as far off as six months. Below I've answered some of the questions people have been asking about the Preliminary Injunction.

## ***Why did CAPPE seek a Preliminary Injunction?***

CAPPE asked the Court to issue the Preliminary Injunction because we knew we would not get a hearing date for many months on the motion for an Environmental Impact Statement. We knew that while we were waiting for a court date, TDOT would be proceeding with right-of-way acquisitions (and condemnations). We felt these actions should not go on when there was uncertainty about the future of the PPE. Apparently the Federal Highway Administration agreed, because they withdrew federal funding for right-of-way acquisition pending the outcome of our case. As the FHWA explained, they did not want federal dollars to be spent on something that was uncertain.

## ***What does the Preliminary Injunction mean?***

The Preliminary Injunction means that TDOT and the FHWA must cease all activity on the PPE. The language in the ruling is "all Defendants and their officers, agents, employees, servants, attorneys, and all persons in active concert or participation with them are hereby restrained and enjoined from continued planning, financing, contracting, land acquisition, and construction of a four-lane, controlled access highway called the Pellissippi Parkway Extension from State Route 33 to Highway 321 in Blount County, Tennessee, pending further order of the Court."

## ***Why did Judge Campbell issue the Preliminary Injunction?***

The Judge's ten-page ruling explains all the issues he considered in issuing this ruling. Please ask a CAPPE Board member if you would like to see a copy of the Judge's ruling. Judge Campbell wrote that there was a "probability of success on the merits" of CAPPE's case on several counts. Judge Campbell noted that there is an "Oversight Agreement" requiring the State to "comply with all Federal-aid funding requirements, including but not limited to the National Environmental Policy Act (NEPA)." He noted that there is nothing in the record to demonstrate that the Federal Defendants explained why the PPE was an exception to the NEPA requirement for an EIS. He noted that CAPPE had a probability of success on the merits of the claim that NEPA requires an EIS because the Environmental Assessment prepared by the State and the FONSI (Finding of No Significant Impact) issued by the FHWA have not adequately explained why the PPE does not "significantly" affect the quality of the human environment. Judge Campbell noted that the Federal Defendants did not take the "hard look" required by federal regulation at the need for the PPE, induced growth and potential inconsistencies with local planning, air pollution and ozone impacts, impacts on the Great Smoky Mountains National Park, and impacts on those whose livelihoods depend on working farms that

would be condemned as part of the PPE. Judge Campbell also noted that the Preliminary Injunction "serves the public interest by insuring compliance with NEPA. From CAPPE's point of view, the ruling could not have been stronger. However, the PI does not mean the PPE will not be built, nor does it mean an EIS will be done. The PI means that TDOT has to cease all work on the PPE until our next court date, where the decision will be made about whether an EIS is required.

### ***What happens to the appraisals and Right-of-Way purchases that were being negotiated before July 17?***

All such negotiations must cease, as ordered in the Preliminary Injunction, until CAPPE's case (requesting the full EIS) is heard in court. Any property owner who has a signed contract with TDOT regarding compensation for their land or property should seek legal counsel regarding the status of that contract.

### ***Does the Preliminary Injunction mean the PPE will not be built?***

No. The Preliminary Injunction means TDOT must stop all work on the PPE until our case is heard in court.

### ***What happens next?***

CAPPE is awaiting the setting of the date of the court hearing on our motion for a full Environmental Impact Statement. Our attorney and the TDOT and FHWA attorneys are setting up schedules for sharing of information and documents necessary to prepare for that hearing. CAPPE will continue to educate the public and raise funds for our legal expenses. Meanwhile, the State has said they will build the PPE with state revenue.

### ***Reactions around Blount County***

CAPPE members and supporters are very happy with the outcome of the July 17 hearing and the issuing of the Preliminary Injunction. We know this is only a small step and there is no guarantee the Judge will rule later that an EIS is required. However, in reading the Judge's ruling, we feel affirmed that asking that the law be upheld was the right thing for CAPPE to do. The Judge's ruling also means the regulations in the National Environmental Policy Act (NEPA) must be taken seriously by TDOT and the FHWA. The Judge's ruling also signals that CAPPE is a legitimate organization working in the public interest. Efforts to discourage or intimidate us have not worked.

Some Blount County residents are not so happy. Some are saying (incorrectly) that CAPPE has stopped the PPE. CAPPE did not stop the PPE. What CAPPE did was ask that federal regulations be upheld. The Judge ruled only that TDOT has to stop work on the PPE until our next court date. We do not understand why some Blount County residents, including some of our elected officials-- think that following the law is unimportant. What other laws do our elected officials think the State should disregard? Some people who bought land a few years ago hoping to sell it at a profit for development near the PPE are angry with CAPPE. To these people, all we can say is that speculation in real estate is inherently risky. So is choosing to disregard the law. Some people may have received verbal offers for their property from TDOT, and are now unhappy that those negotiations are suspended until our case is heard in court. A few

people may have made commitments to purchase property in anticipation of finalizing their compensation and relocation agreements with TDOT. While we feel sympathy for these people, they took action based on assurances from TDOT and it is with TDOT that they must take up their concerns. We hope their commitments to purchase property contained the standard contingency clauses stipulating the fulfillment of TDOT's offer as a condition of the purchase contract. Anger with CAPPE is misplaced. Judge Campbell found that TDOT, not CAPPE, had failed to comply with the law.

Some people think that CAPPE is a tiny group of people who will be losing land if the PPE is built. Many of our members do not live on the proposed route of the PPE, and some of our members will lose land if the PPE is built. The local media have continued to represent CAPPE as consisting of only a few affected property owners, even though we have told them about the breadth of our membership and support. People across Blount County have joined and supported CAPPE because we think the impact of the PPE has not been properly studied and the assumptions of its positive effects are only assumptions; they are not based on analysis.

Specifically, Mayor West's claim that the PPE will alleviate traffic congestion in Maryville is speculation. This speculative claim is also made in TDOT's Environmental Assessment, but it is not proven by analysis or data. The Southern Loop, (which with the PPE would comprise a beltway around Maryville and Alcoa) which Mayor West also supports, could draw some traffic away from downtown Maryville, but current traffic figures show that most traffic into downtown Maryville has downtown as its destination. Just because a few prominent people say the PPE is a solution to the problem of congestion in downtown Maryville is not sufficient to persuade all of us. We want to see the evidence that this is truly a solution, and even more important, that the "solution" does not create even bigger problems for Blount County. This is why CAPPE has been asking for an EIS.

Some people are starting to notice that TDOT has lots and lots of money while the rest of the State budget is in a crisis. TDOT has expressed, to the court and to the public, their intention to build the PPE with state revenue even if the FHWA does not restore the funding it has temporarily withdrawn. Given the condition of the state budget, and the shortages in funding for our schools and other services, we expect even more Blount County residents will join CAPPE once it becomes clear that their tax dollars are being used to build an interstate highway that will only add to the existing pressures on Blount County schools, roads, air, water and the Great Smoky Mountains National Park.