

**Open Work Session  
Barren Creek  
November 1, 2016**

Mr. Wayne Strausburg, Director of Administration, Mr. Weston Young, Director of Public Works, and Mr. Lee Outen, Roads Superintendent came before Council. Mr. Strausburg said he would like to talk about the County's options as we move forward. He said the dam and private land are privately owned. The County does not have any ownership rights or easements that would be required to carry out any associated restorations. Mr. Strausburg said there are two landowners at either end of the road. The owner on the south end has advised the County that he does not want the road reopened and that he wants the road to be terminated at his property. The other owner has been unresponsive to the Executive to meet to discuss any possible restoration. He said that particular owner owns the dam, the land under it, and the land adjacent to it. He said he thinks Mr. Baker can describe the great difficulty the County has had with this owner for well over two decades. He said immediately after the July washout, which he thinks it is the third or fourth time in the road's history, they met onsite with representatives from the appropriate state agencies to discuss the County's options. He said none of the agencies were in favor of restoring the dam. He said Mr. Young and Mr. Outen will walk Council through the options available to Council with the estimated costs of each. He asked that Council bear in mind that the state assembly has continuously rejected to restore Governor Hogan's HUR funding and the Governor has just announced \$82 million in spending cuts, which includes reduction in County Disparity Grants. He said the financial support for County roads will come from the County's general fund. Mr. Young said there are a few alternatives that the County has been considering and all involve getting the necessary property to do work out there. The two main options in terms of restoring the road are restoring the road with culvert pipes or restoring the road as a dam. There has been a request for both to be considered. The two main state agencies that regulate this are Department Natural Resources (DNR), with the fish passage. They have money across the state for the removal of the dams. They are looking to increase habitat for the fish that migrate upstream to lay their eggs. The other agency is Maryland Department of Environment Dam Safety. He said MDE Dam Safety is okay with the County rebuilding the dam, but it has to be built to modern dam regulations. The current setup is a historical mill dam, and it has been there for hundreds of years. It was not built to dam safety standards. It was in poor condition. It was not on the state's radar because it is a low hazard dam, which means the threat of property or life loss is minimal or nonexistent. The fact that it is private and low hazard means that it was not on the County's radar either. The County has nine dams, which are high hazard. The one they were working on this summer, Morris Mill, has 56 residential properties and 19 roads that are effected, so it is considered a high hazard dam. The rough estimate for the construction of the dam is \$2 million to \$3 million and possibly more. They have not had it designed yet and that will be several hundreds of thousands to do that and make sure it is made out of a clay core. The culvert option is what they needed to hear from the fish passage folks first to see if it is okay to put some sort of culvert there. He said like many roads in the County that cross streams or creeks, they have pipes that go under the roads. When the County needs to do repairs to those roads, they reach out to state agencies and, if it is an emergency repair, they talk to the state agencies afterward. If it is something very common, they can do it in-house. Mr. Young said the two main options on the table, which both require property as Mr. Strausburg described, include putting in a dam at a several million dollar cost estimate and then doing the culverts. They are trying to harden the number, but the County is looking at \$200,000 to \$400,000. The road stretch that is considered a dam is almost 700 feet long and that has been eroded in various forms. Mr. Young said they would need to put a guardrail back and given how tight the road is, they have to use a special guardrail, which is probably an additional \$50,000 at least. Mr. Cannon asked if the cable cost more than the barrier, to which Mr. Young responded, yes. Mr.

Outen said the type of guardrail that is there now is actually more expensive than the standard guardrail that you see along the road with the cable and posts. Mr. Young said the two main options, which involve getting the needed property to do either, have costs that range from hundreds of thousands to multi-million depending on what course of action the County wants to take to reopen the road. Mr. Joe Holloway asked if the culverts would restore the pond, to which Mr. Young responded, no. Mr. Joe Holloway said the County does have ponds with culverts. As an example, Merritt Mill has a pond that has culverts. He asked why the culverts would not restore the pond. Why couldn't it be built? Mr. Young said it is possible but when you start having a pond and embankment, it starts reaching the dam regulations and that kicks it to giving almost 10,800 in terms of thousands of acres that drain to that location. He said that is almost 11,000 acres that drain there. If you have it ponded, it has to withstand that amount of water. Mr. Outen said the fish passage would only be part-time if you set the pipes below pool elevation. He said if the County is not having weather events and the pond is just sitting there, you are not going to have anything going through the culverts. There would not be fish passage. Mr. Joe Holloway asked as far as the landowner, does the person that owns the pond own the land on the pond side and the swamp side. Do they own both sides of the road? Mr. Young said the downside of the stream is owned by the historical trust. Mr. Joe Holloway then asked if the County has made contact with the historical trust about donating land to help restore the road. Mr. Young said he is not sure if any conversations have been made with the historical trust. Mr. Joe Holloway further asked what is the agreement with Parker's Pond, as it is a similar situation. Mr. Outen said it is similar. They have one gate that is considered private. That owner paid for improvements to the gate, which actually generated electricity at one time. Mr. Joe Holloway clarified that the County has easements and the road is the County's, to which Mr. Outen responded, the County has easements and the road is the County's but, at that particular location of the gate, the actual structure under the road is private where the gate is. Mr. Kilmer said on the ownership, the County operates the road that used to exist there. He then asked does the County operate down from the road, or where the road is built on private property. Mr. Kilmer said he is trying to get clarification on what is privately owned and what the County owns. Mr. Strausburg said the history, as he understands it, which goes back to the 1950s, is there was an agriculture dam there. The State of Maryland constructed the road. At some point in time, the State of Maryland offered ownership of the roadbed to the County, and the County accepted it. It is a very odd situation. He said in discussing it with Mr. Wilber, he mentioned that it simply does not make sense that a road that was built on a right-of-way, which there was not a permanent easement and/or fee ownership, and apparently that long ago, it was fairly common. The fee ownership or permanent easement, to the County's knowledge, does not exist. Mr. Kilmer clarified that the County owns the roadbed itself and dam that it is on is Mr. Suggs, to which Mr. Strausburg responded, yes. Mr. Hall said not all of it is owned by Mr. Suggs as 700 feet is on the south end, which has been requested to be closed, that is part of the dam also. Mr. Young said it is part of the dam on the downstream end. It usually does not get as much action in terms as where the spillways are, so in terms of the controls to the dam, they are owned by Mr. Suggs. He said there is a three entity arrangement that makes up the dam. Mr. Kilmer asked where it leaves Route 50 by the hardware store, is that County property or is that private property, to which Mr. Young responded that is County property. Mr. Kilmer then asked if it is a County road until it enters the dam, to which Mr. Strausburg said the road goes to the dirt road section of Athol Road. He said from that point you have not reached the problematic portion of the road. Mr. Outen showed a map of the area and explained what portions are owned by the three different landowners. Mr. Kilmer said since there was a road there going back to the 1700s, nearly 300 years ago, it obviously was not a county road back then, but there was public access. Mr. Kilmer said the County had access when the road was there. It was not an issue as they could not bar the County or public from it. He asked what about restoring what had been open to the public for nearly 300 years. What is the legal doctrine? Mr. Strausburg said that is a question he cannot answer. Mr. Baker said,

generally speaking, what Mr. Strausburg said is correct in that the roads in the County are just right-of-ways. The County does not own the fee simple to them. He said if the County owns the right-of-way, the County can build the road in the same place it was before it washed out. He said the County's problem is what to do with the ground under it. He said you still have the dam under it. Mr. Strausburg said it is the air rights from the pond bed to the bottom of the road surface. The County has no ownership, to his knowledge. The County has no ownership to construct bridge pilings; the buildup of a dam. It is a very odd situation but what you have to bear in mind is the watershed that drains to that narrow portion is a 20 square mile watershed and a considerable amount of that watershed is in the State of Delaware, Sussex County. Mr. Strausburg said we have been experiencing rainfalls in the County unlike any time during his lifetime. It begs the question, from a civil engineering standpoint, what design do you build to, if you are going to expand the pond bed, which he cannot answer. Mr. Kilmer said Wicomico County cannot be the only County that has these types of earthen dams going back hundreds of years. It seems like that there would be some type of case law where this has happened in the past somewhere else. The County is not unique. He then asked Mr. Baker if he can check to see if there is case law about this sort of stuff. He said right now the road partially exists, but the road is probably crumbling daily in that area. Mr. Kilmer asked what happens if the Adkins Historical Society says you can build a bridge on our portion where it breached because it did not breach on the spillway. He thinks it breached in the middle of the earthen dam, so perhaps the County can expand by means of a bridge using the property on the swamp side. He said the County would have to reroute the road slightly to do that. Mr. Kilmer then asked if that would be an option. He said the road is still there until it falls into the swamp. Mr. Outen said if the County is going to build a bridge, you are talking about \$5 million dollars and 10 years of environmental permits. He asked if they can move it out a little bit onto the Adkins property. He said the road exists where it is now, so legally that should not be an issue. Mr. Strausburg said he cannot speak for Mr. Adkins. Mr. Kilmer said he is talking about the historical society, not the landowner. Mr. Joe Holloway said it is called the Adkins Historical Society. Mr. Young said the thing to consider is the road is at a certain elevation and where the current natural surface is whether it is the swamp side or marsh side or the former pond side is that there is a drop. If they put a road back, there needs to be some type of slope going down. To rebuild that slope they would impact both property owners. While the culvert could be shifted over to just the historical society side, the slopes going down for the rest of the road would need to be rebuilt on private property on the upstream end. Mr. Hall clarified that the County cannot build the road without permission of current landowners, to which Mr. Young respond, in this case because the road is higher. Mr. Strausburg said based on the legal advice the County currently has, to summarize, the least expensive and most environmentally friendly approach to any restoration would be the culverts, the fish passage, but the County still needs permission from the property owners. Mr. Joe Holloway said Mr. Adkins does not have anything to do with putting the road back as he just lives close by. Mr. Strausburg said he thinks the portion at Athol Road from the dirt road to the beginning of the dam is on his property. Mr. Joe Holloway said the County has the right-of-way. Mr. Outen said not once you get to the dam. He then showed on the map the portion that is on Mr. Adkin's property. Mr. Kilmer said the road already exist on there now. Mr. Matt Holloway asked who owns the portion that the County needs to work on, to which Mr. Strausburg responded, Mr. Suggs. He said the person with whom the County was dealing with all those years was Mr. Suggs, Sr. and, at that time, he lived in Phoenix. He has passed away and the current owner is his son. The County has not been able to meet with him to discuss what his intentions are. Whether or not he would be interested in allowing the County to rebuild whatever across the pond bed he owns. Mr. Cannon said in some instances, such as if you own a piece of property and someone has been using your driveway for seven plus years, then they automatically have the rights to the property. He then asked if that is not the case in this situation. Mr. Baker said he does not think anyone disputes that the County has rights to the road, the problem is you cannot do much with repairing the road unless you get the mineral rights, so to speak, the land under

the road. Mr. Cannon asked if the rights to the land under the road fall into the same guidelines that if you are using someone's property for 20 years, then you take ownership of that property. Mr. Joe Holloway said it is called Easement by Necessity and it does not always work out. Mr. Strausburg said you are talking about adverse possession. Mr. Baker said part of the problem is that you are still changing the land under the road from what the County's easement would have been. Mr. Baker said the County has the right to build the road, but the dam that was under the road is another whole question because that belongs to Mr. Suggs. Mr. Cannon said Mr. Wilber was going to do a comprehensive study. He then asked was that done. Mr. Strausburg said his legal analysis is that the County does not have the right to reconstruct a dam, culvert, or bridge without the approval of the property owner. Mr. Matt Holloway said he thinks the County should restore the road. Mr. Culver said in order to build the road back the County has to do a two to one slope. You have to go 50 feet out in the pond area. Mr. Kilmer asked if that is the road or the dam, to which Mr. Culver responded, to build the road back, it has to be a two to one slope, which means the County has to go 50 to 60 feet out into his pond and onto the Adkins Trust property. Mr. Culver said Dave Kenney represents the Adkins Trust and that is not a problem. Mr. Culver said once they get the environmental part taken care of that side is not a problem, but the County still needs go out into the pond. Mr. Joe Holloway asked if the County can build further downstream so it does not have to go out into the pond and put the slope where the road is now. He said that would take more of the Adkins Trust property. Mr. Strausburg said he is not sure the County wants to do that. Mr. Young said that impacts more tidal and non-tidal wetlands and that would be nightmarish. Mr. Joe Holloway said Mr. Baker made the comment that the County usually does not own the old roads, it has a right-of-way. Mr. Joe Holloway said he has seen some of the old deeds and sometimes you have property and it does not even mention anything about a road. The road just appears at some point in time. He then asked Mr. Baker if the County owns the right-of-way but not the property under it. Mr. Baker said the problem is when the County got the right-of-way from the state there was a dam under it, and he does not think the fact that it washed out changes the ownership of the dam. Mr. Joe Holloway asked if the County assumed a 12 foot right-a-way, it would go down. Mr. Baker said it goes down as far as they have it and, at that point in time, there was a dam there. Mr. Joe Holloway asked if the legal document says it only goes down to the dam, to which Mr. Baker said, no, it usually just says surface. Mr. Joe Holloway then asked if the document says just the surface. Mr. Baker said what he is saying is that the right-of-way is usually just the surface and anything under it can still be owned by the adjoining property owner. Mr. Joe Holloway said there was a culvert put in under the road down where he lives. He said the culvert is nothing like what is needed for Barren Creek. Mr. Outen said the culvert put in on Forest Grove Road is in the County's right-of-way. Mr. Joe Holloway said this culvert would have to be put in the County's right-of-way too, but it is under the ground. Mr. Outen said if the County is going to be putting culverts in, it would be extending out of the roadbed onto private property. Mr. Matt Holloway asked if the County can send the property owners a letter asking for them to respond in 30 days and, if there is no response, that means concurrence. Mr. Strausburg said you are now getting into the area of eminent domain. Mr. Cannon asked what communications have been made, to which Mr. Strausburg said Executive Culver met with Mr. Suggs at the meeting in Mardela. Mr. Cannon said he met with him the same evening and it seemed like he was very amicable. Mr. Culver said he had a meeting setup with him the next day, but he called and cancelled because he was not feeling well. He has tried to setup other meetings, but he keeps cancelling them. Mr. Strausburg said this is historic behavior from the landowner. Mr. Baker said the way they used to get Mr. Suggs, Sr.'s attention is that they would write him a letter stating that if the road goes out, you are going to be responsible for the costs. He said he thinks the County threatened condemnation once before. He said usually then he will call wanting to talk. Mr. Dodd asked if the County can do that again. Mr. Matt Holloway said the County does not really have anything to threaten him with. Mr. Dodd said he knows the County is leaning toward eminent domain, and he knows the Executive does not want to do that,

and he does not know if that is the right thing to do, but there are a lot of people who want that road fixed. Mr. Kilmer asked if you can have eminent domain just for the right-of-way, to which Mr. Baker responded, yes. Mr. Kilmer said the County does not have to actually take his property. The County has a right-of-way on property that has existed possibly close to 300 years and public access. The County can say we are not going to take your property, but the County has a right-of-way like it does through every other private property recently built. Mr. Baker said the County still has to have extra land for the slopes. He said you can have eminent domain for that, but it is not going to make much difference in the value as to whether you take the whole thing or just the right-of-way. Mr. Dodd asked if the two to one slope is going to affect anything else around it other than taking up 50 feet on each side of the road. Mr. Young said he thinks the soil was restricted too if the County puts the dam back. He said if the County put in a roadway culvert they may be more forgiving, and the County may have a steeper slope like what was out there. He said to put the dam back as part of Dam Safety, it makes the dam a lot thicker if you go with a shallower slope going down into the water. Mr. Dodd asked if you have to pack the side with anything to keep it in place, to which Mr. Young responded, yes, that is standard road construction. Mr. Matt Holloway said it seems like his yard is the bottom of the pond. Mr. Strausburg said from a fiscal standpoint, the most logical approach, if the County wants to restore the road, is the culvert fish passage idea. He said he recalls, historically, the senior Mr. Suggs was concerned about maintaining the pond itself because he thought that created waterfront property and enhanced the value of his property. He said when you get into a restoration that does not allow for the retention of water and a creation of a pond, you have effectively done a partial taking because you have devalued the land. He said the County is getting into an area of law that gets very complicated. Mr. Strausburg said there is no pond now, so you would make the argument that if you want a pond, then you would have to build a dam, and the County would be happy to build a road across the dam like the state did years ago. Mr. Strausburg said that would take some legal research. Mr. Cannon said he does not believe in eminent domain. In this circumstance, the County is not taking a yard or house, the County is interested in 10 to 20 feet of a bottom of a pond in a swamp area, which he does not think has created a real impact on the owner at all. Mr. Kilmer said going back to what Mr. Baker said about the County writing letters to the elder Mr. Suggs. He said Mr. Baker mentioned that if Mr. Suggs did not maintain it and something happened, he would be liable for the damage. Mr. Kilmer asked was that a bluff or based on some solid legal theory because there is now damage that occurred because it was not maintained. What was the theory that he would be liable? Mr. Joe Holloway said that is when Mr. Suggs gave the County the permission to open the gates. Mr. Baker said Mr. Suggs was denying the County access to the dams, so the County could not control it. Mr. Strausburg said he gave the County a License Agreement to operate the gates. Mr. Kilmer asked once the County had the authorization to operate the gates, was it the County's responsibility, to which Mr. Strausburg responded, yes, for the roadbed. Mr. Joe Holloway clarified the County sent Mr. Suggs a letter saying if the road washed out he would be responsible, so he gave the County permission to raise the gates. He asked since that did not happen, does that make the County responsible now, to which Mr. Baker responded, yes, for repairing the road, which is what the County is trying to do, but it cannot do that without Mr. Suggs's permission. Mr. Cannon asked, when Mr. Suggs called the Executive's Office, what direction was he leaning. Mr. Strausburg said he did not speak to him, Executive Culver spoke to him. Mr. Culver said he seemed to be helpful. He said he asked Mr. Suggs if the County purchased his property how much would he want, but Mr. Suggs would not give him a price. Mr. Matt Holloway asked if the property was ever listed, to which Mr. Culver said he spoke to JV Wells, who worked on it a couple of times, but he never got it listed. Mr. Cannon said he may have been overwhelmed by the approach to sell his entire property. He may have shut down entirely on that idea, but if the County wants to revert back to having 10 to 20 feet that may be a different situation. He said Mr. Suggs may be avoiding meeting with County representatives because he does not want to get into a conversation about selling his property. Mr. Cannon said the public has expressed that they

understand the road with the culvert, and they can live with that, and it would be an acceptable way to go, especially in consideration of the cost of the dam. Mr. Kilmer asked if Council can hear from Mr. Kenney, who was in the audience, as he represents the public in the area. Mr. Kenney went to the podium. He said in 2005 when the dam washed out, the County fixed the road. There was not a concern about the slopes, the County just went in and fixed it. He said it was not as bad as it is now, but the road had eroded, other than the blow out area, about the same. If the gates had been managed properly, there would not have been a wash out. The dam was holding up very well, and it was not until there was erosion on top of the road that it eroded away half of the roadbed. The dam was holding, but after so long it could not take it anymore, and it just gave up. The problem is not the dam, the problem is the management of the dam and who had control of it. Apparently, the County had control over it, but was not maintaining it. He said we were not prepared for the type of rain event. There had been no maintenance done ahead of time, and they had to react to get the gate open with an excavator. There were no chains or anyway to hook onto it. It actually created some safety issues with the guys trying to get it out in bad conditions. He said Mr. Kilmer and him were down there on Monday or Tuesday and the grass over top of the gates had built up quite a bit, and it was also restricting the flow of water. Mr. Kenney said the point is if we as a County had taken control over the dam and managed it, we would not be talking about this matter tonight and spending several hundred thousand dollars or several million dollars to put a dam back. He said he likes the idea of pipes, but to be honest most of the people want the dam. The fire company wants the dam, and he would think the people who live out in the area would want the dam, so the fire company could draw water if any of those folks had a fire. Right now the only place they can go is in Mardela to the creek or to the firehouse for a slow fill of the fire trucks. The pond actually made for a faster fill. They used the pond when they had a roadside stand that was on fire. Mr. Dodd said that is called a dry hydrant. Mr. Kenney said they actually just extracted the water out of the pond. Mr. Dodd clarified that there is not a dry hydrant there, to which Mr. Kenney responded, no, there is not a dry hydrant there. Mr. Kenney said in talking about the fish passage, he likes the idea of an elevated culvert. They do not have to have a full pond if they have coverage and keep the wooded plant growth down. He said the fish can still possibly get through the culverts. The DNR fellow, who was at the meeting in Mardela, talked about the fish not being able to have 365 day access to the pond because there are spots in Barreen Creek that the fish could not pass anyway, unless the County had the spring rains and all the water. Mr. Kenney said in speaking about property ownership. He said everyone keeps talking about Mr. Adkins is on one side and Mr. Suggs is on the other side. He said across the road from that is the Adkins Historical community. It owns along the road. He said their Board has talked about working with the County to allow expansion of the road over on their side, if the County cannot use Mr. Suggs' side. They are willing to work with the County, but they want something in return. They want a pond or work towards that end, which he thinks is fair. He said Council talked about Mr. Adkins owning the road from Athol Road down to the pond. He would only own half of it because the Adkins Historical Society owns the other half. He said they are a third party in this matter. It is not just the folks that own the pond and the house next to the pond. Mr. Kenney said Mr. Adkins is Mr. Jimmy Adkins, who owns the house, does not want the road reopened because of the traffic that comes by. He said what he sees going on right now is that people are driving down to the sign that is in the middle of the road in front of his house and parking there. On the other side, where Mr. Suggs's house is, he sees a lot of trash, so something is going on down there. He said there is a big drug problem in Wicomico County and that is going to be a good hang out for stuff like that. He is already seeing evidence of things happening in that area where no one lives. He said he talked to Mr. Suggs the day after the meeting in Mardela. He came into the store, and they had a conversation about what his plans are, and he said he planned on moving back here to get the house ready to sell. He also said he would like to sell some property to the County. Mr. Suggs and his wife both have health issues, and they are hard to communicate with. He tried to call Mr. Suggs today and he did not get an answer

either. Mr. Joe Holloway asked what is the chance of the Historical Society taking control of the pond if Mr. Suggs released it, donated it or sold it. Would the Historical Society be interested in the pond property? Mr. Kenney said they do not have the money to buy it, but they would accept a donation. Mr. Joe Holloway said some people accept donations for tax reasons. Mr. Kenney said they would accept it if it was available, but they do not have money to buy it. Mr. Cannon thanked Mr. Kenney for helping to host the town forum. Mr. Kilmer asked how did it work in 2005 when the County repaired the road, to which Mr. Young said Dam Safety was okay with a restoration, but there are not okay with it now. If the County were to rebuild the road, the entire dam embankment has to be upgraded. Mr. Kilmer asked if Dam Safety is separate from the private property issue, to which Mr. Young responded, yes. Mr. Kilmer then asked how was the County able to work on private property in 2005 if the owner did not give permission to the County. Mr. Young said he was not working for the County in 2005. Mr. Outen said in 2005 the road washed out on the Adkins side of the roadway. It was not a breach of the dam. Mr. Kilmer clarified that Mr. Adkins owns the west side of road, to which Mr. Young responded, yes. Mr. Kilmer then asked if they own half of the road. Mr. Young said the County owns the air rights on the road and it would probably be dead center, but he is not positive. Mr. Kilmer said it would be nice to have some legal analysis on the ownership and what happened in the past. Mr. Kilmer said it is his understanding it was common for folks to put up dams for old mill ponds and then back in the 1700s it was the King that said you had to have a road over them. He said this cannot be the first instance there was a public road on top of an old mill pond that has washed out and destroyed the road. There should be something in case law. Mr. Young said Dam Safety is involved now and that has changed the dynamics a bit from 2005. He said it should also be noted that while the County has a license to access the gates and open the gates, the County does not have sole responsibility over those controls. He said, on the day of the event, the first call came to the 911 Call Center at 6:57 a.m. and the County had people out there shortly after 7:00 a.m. He said when it was determined that the main spillway was broken possibly from other private attempts of opening the gates, they had to get heavy equipment to fully open the gates. It was approximately 7:40 a.m. when they got the main spillway opened. Mr. Outen said the gates are always opened with heavy equipment as that is how they are designed. There is always a chain on the gates but, unfortunately, prior to the County getting there, someone broke the chains and gates so that complicated things. Mr. Young said from a Department of Public Works standpoint, at soon as they were notified, they had public works crews out there. He said it is also important to note, from the conversation with Mr. Kenney, that there is now a second property owner that is unwilling to give the County property unless there is a pond. He said we cannot get property unless there is dam. He said he thinks the raised culverts likely will not work from the fish passage standpoint, but they can see what DNR is willing to entertain. Mr. Dodd said Mr. Kenney mentioned how important the pond is for the fire department. Mr. Dodd said he does not think the Town of Mardela has hydrants. Mr. Outen said the Town of Mardela has a dry hydrant. Mr. Dodd said but there is not a dry hydrant in that area, so the pond is a valuable water source. Mr. Young said the County can install a dry hydrant and that was mentioned at the meeting. Mr. Young said the County would be glad to install a dry hydrant at any one of the County's bridges for any fire department that requests it. Mr. Dodd said DNR will install the hydrants if someone asked them. Mr. Dodd said it seems like a valuable water source for the fire department, especially if your house is burning down. Mr. Outen said there are a lot of dry hydrants in the County. Mr. Kilmer asked if the County does not restore the road or the dam, how much is cleanup going to cost. He said it is a mess out there right now, and it cannot stay in that condition. He asked, if the road is going to cost \$200,000 to \$400,000, does that include cleanup costs. Mr. Young said the difficulty with the cleanup is similar to rebuilding, the County has to stop the erosion and stabilize property that is not the County's. The County would be doing stabilization efforts. He said for the 600 feet leading up to the breach on each end, the stabilization would occur outside of the County's right-of-way. Mr. Kilmer clarified that the County has to clean it up, to which Mr.

Strausburg responded, absolutely, as that can be a safety issue. Mr. Kilmer asked if the County does not restore the road and does not restore the dam and it has to be cleaned up and that involves some of the same issues, how is the County proposing to deal with some of the issues for the cleanup, to which Mr. Young responded, the County is in a holding pattern. Mr. Strausburg said they will need something similar to a construction easement. Mr. Outen said the sediment and erosion control issues are private issues. He said MDE is aware that the County is not responsible for sediment coming from a private dam. The County would certainly take care of cleaning the roadbed and stabilizing what is in the area but, at this point in time, it is a private dam that is causing sediment and erosion control issues into the waters of the state. Mr. Joe Holloway asked if they think Mr. Suggs would respond to MDE, to which Mr. Outen responded, he may. Mr. Young said a lot of the stabilization would be the same if the County was putting culvert pipes in. He said other than fixing the breach with designed culvert pipes and certain inverts at certain elevation, the rest of it the County would have to do. Mr. Young said it makes sense that the County reopen the road with culvert pipes, but the County's hands are tied from a property standpoint. Mr. Kilmer asked if the County decides not to reopen the road would the state would force Mr. Suggs to pay to clean it up, since the waters of the state are draining into Barren Creek He said, if so, he would be on the hook for a large bill at that point. Mr. Young said there is a chance that all entities involved could get a Consent Order from the state. The County would have to clean up the road, and the upstream and downstream owners would have to clean up their sections. Mr. Outen said Mockingbird had a dam that blew and it is still blown and it has not been stabilized. He does not know if MDE is going to tell them 30 years after the fact that they need to stabilize the banks. He said the dams get to a point that they stabilize themselves as they grow vegetation and become stable. He does not know if MDE would do that in the case of Suggs as MDE is more stringent now. They may go in there and give Mr. Suggs a Consent Order and tell him that it needs to be cleaned up. Mr. Kilmer said it seems to him that if the state is going to force someone to do the cleanup that is the avenue the County could use, if it is basically just a little bit more work to put a culvert in, if the County is cleaning it up anyway. He said that seems like a good angle to take to get the road back. It does seem like it is continuing to erode as it is worse now than it was weeks ago. Mr. Strausburg said from a public policy standpoint, the County does not want to leave it in the condition that it is in now. The County has to have the authority to enter onto private property. Mr. Kilmer said he heard that the issue is not about rebuilding the road as that is what was stated in the press. He said he thinks everyone on the Council is probably more than happy to assist administration to make sure the road is rebuilt and possibly the dam. Mr. Kilmer said he thinks there is a more immediate need to get the road back because of the travel issues. If the County can get the road done first and then argue about the dam and the money later. He said we can fix the 80% we agree on and then argue about the other 20%. Mr. Strausburg said given the fiscal environment, building a dam for cosmetics is probably not a good use of tax payers money. The County builds dams for public safety. This is not a public safety dam and never was. Mr. Outen said if there is no pond, there is no risk as that is the whole thing with the dam association. If there was a stream of water going through there, there is no risk. It is when you create a pond of water that you create a risk to public safety. Mr. Kilmer said the County made that choice as it could have taken Morris Mill out, but it chose to keep it. He said the state does not like dams, so they may not have been happy. He said it is a political decision on what happens and how the money gets spent. Mr. Cannon said he thinks it would be nice to get a real legal review. Mr. Strausburg said they would do that. Mr. Cannon said it is important to understand where these costs are going to be separated from MDE's perspective as to whether they will find the owners responsible. If that is the case that may be an incentive for the owners to cooperate with the County. Mr. Cannon said that is not being heavy handed as that may be a true reality. He said the County should get confirmation from MDE on what their position is. He said it has been suggested that the County realign the road, which may be an option. He said the County needs to get a legal position on every scenario as well as what the options are and the costs. Mr. Cannon said the



County needs to create a formal line of communication with anyone who is involved in the ownership and talk to them to iron down some real communication. Mr. Joe Holloway said maybe the County should ask Mr. Suggs if he has an attorney that the County's attorney can speak to as he is difficult to get a hold of. Mr. Strausburg said the last time Mr. Baker was able to make contact with Mr. Suggs' attorney to get the License Agreement done. He said he does not know what his personal circumstances are except for he keeps cancelling meeting after meeting and it gets to be a bit frustrating.

**Open Work Session  
Barren Creek  
November 1, 2016**



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John T. Cannon, President



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Matt Holloway, Vice President



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Ernest F. Davis, District 1



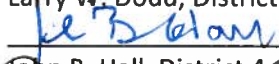
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Marc Kilmer, District 2



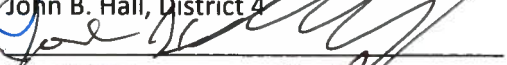
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Larry W. Dodd, District 3



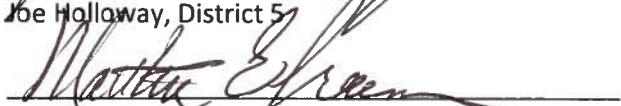
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John B. Hall, District 4



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Joe Holloway, District 5



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Matthew E. Creamer, Council Administrator