



Department of Energy

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**Mr. James A. Saric, Remedial Project Manager
U.S. Environmental Protection Agency
Region V-SRF-5J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590**

**Mr. Tom Schneider, Project Manager
Ohio Environmental Protection Agency
401 East 5th Street
Dayton, Ohio 45402-2911**

Dear Mr. Saric and Mr. Schneider:

REVISED PROPOSAL FOR CONSERVATION AREA ENVIRONMENTAL PROJECT

Reference: Letter, from Reising to Saric and Schneider, "Response to the U.S. Environmental Protection Agency Comments and Revised Proposal for Conservation Area Environmental Project," dated March 10, 1998.

Enclosed please find the revised proposal for the establishment of the Conservation Easement. The revised proposal was intended to accompany the above reference letter, but was inadvertently omitted from the comment response package. We apologize for any inconvenience this omission may have caused.

If you have any questions regarding this matter, please contact Kathleen Nickel at (513) 648-3166.

Sincerely,

**Johnny W. Reising
Fernald Remedial Action
Project Manager**

FEMP:Nickel

Enclosure: As Stated

cc w/enc:

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**PROPOSAL ESTABLISHING
CONSERVATION AREA NEAR THE
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
OPERABLE UNIT 4 SUPPLEMENTAL PROJECT**

**FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
FERNALD, OHIO**



FEBRUARY 1998

**U.S. DEPARTMENT OF ENERGY
FERNALD AREA OFFICE**

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**PROPOSAL ESTABLISHING CONSERVATION AREA NEAR THE
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT
OPERABLE UNIT 4 SUPPLEMENTAL PROJECT**

1.0 INTRODUCTION

As part of the Dispute Resolution Agreement regarding the Operable Unit 4 (OU4) milestones for the Fernald Vitrification Facility, the U.S. Environmental Protection Agency (U.S. EPA) and the U.S. Department of Energy - Fernald Environmental Management Project (DOE-FEMP) have agreed to perform five environmental projects in addition to a cash penalty. One of the five projects involves establishing a conservation area on a piece of property near the Fernald Environmental Management Project (FEMP) that is considered to have high ecological value. A conservation area, as defined under this project, is an area that could be "set aside" and protected in order to preserve the property's natural characteristics. This conservation area would further enhance the proposed Natural Resource Restoration Plan for the FEMP by preserving habitat contiguous with or near the restored FEMP site.

The Dispute Resolution Agreement included a provision that DOE-FEMP would submit a proposal to U.S. EPA to establish the conservation area by November 21, 1997. This document serves as the proposal and outlines the approach and schedule for establishing the conservation area. This project involves the voluntary cooperation of landowner(s) adjacent to the FEMP. A specific tract of land for the conservation area is not provided in this document. However, the mechanism to be utilized for establishing the conservation area and the criteria for selecting the property is outlined in the following sections.

2.0 GENERAL APPROACH

The scope of this project involves the selection and identification of a piece of property near the FEMP that would be suitable for establishing a conservation area. Criteria for property selection have been established and are provided in Appendix A. ~~Key aspects of these selection criteria were taken from the OU4 Dispute Resolution Agreement. Other aspects of the criteria have been developed by DOE using best professional judgement. In addition to the ecological considerations, it was further agreed in the Dispute Resolution Agreement that an area in the range of 30-100 acres would be targeted for the conservation area.~~ The ideal property for the conservation area would be property that is contiguous or very near the FEMP and contains high ecological value (e.g., wetlands, mid- or late-successional woodlands, unique and/or protected species). Using the attached selection criteria, property that

appears to be most suitable for the conservation area ~~will be~~ ~~has been~~ identified and the landowners ~~will~~ ~~be~~ have been approached regarding the potential for establishing the conservation area. The landowner ~~may~~ must have an interest in preserving the targeted piece of property and be willing to work with DOE in establishing the conservation area. The establishment of the conservation area will only be feasible if landowners are willing to work in a cooperative agreement with DOE. However, if an interested landowner is not identified and this project is determined not to be feasible, DOE-FEMP will have to request an alternative to the project and work with U.S. EPA to make appropriate changes to the Dispute Resolution Agreement.

There are several mechanisms that DOE-FEMP could utilize in establishing the conservation area. DOE-FEMP could pursue the outright purchase of the property and then set the property aside as a conservation area. A joint agreement could be pursued with a land-trust or conservation organization to acquire the property or to establish a conservation easement on the property. Finally, a conservation easement directly between DOE and the landowner could be pursued.

The outright purchase of the property by DOE-FEMP is not recommended as the most suitable alternative for establishing the conservation area. The goal of the project is to simply protect the area from future disturbance and maintain its ecological integrity. DOE-FEMP would not necessarily need special use or rights on the property that would justify pursuing ownership. Therefore, purchasing the property is not considered necessary to establish the conservation area. In addition, purchasing property is expected to be more costly than the alternatives. Although purchasing the property is not recommended as the primary alternative, it may be necessary, depending on the specific circumstances surrounding the targeted property.

There are regional conservation groups and land-trust organizations that do acquire property for conservation purposes. DOE may work with one of these groups to purchase the property or establish an easement on the property. However, purchasing the property with another organization presents the same issues as DOE-FEMP purchasing the property directly and is not recommended. Working with a conservation organization or land-trust organization could be effective in establishing the conservation area through an easement, but adds a level of complexity to the process that may not be necessary. In order to effectively implement this alternative, two groups, instead of one, would have to negotiate with the landowner(s) and be parties to the easement. In addition, funding would have to be transferred to

the conservation organization or to the land-trust organization by DOE-FEMP to cover their costs which also adds complexity to the process.

The alternative that is recommended by DOE-FEMP is the establishment of a conservation easement between the United States Government on behalf of DOE-FEMP and the landowner(s). Under this scenario, the Federal Government would serve as the holder of the easement, while DOE-FEMP would ensure the conditions of the easement are upheld on their behalf. This alternative appears to be the most streamlined in terms of implementation and the most cost effective of all of the alternatives considered. With the establishment of a conservation easement, the landowner retains ownership of the property and receives financial benefit for establishing the easement. In addition, the conservation easement ensures that the property is protected from future man-made disturbance.

3.0 RIGHTS AND RESPONSIBILITIES

In the conservation easement, ownership of the property will remain with the landowner. The landowner would remain free to sell, lease or give the property away at his/her discretion subject to the easement. The easement becomes part of the deed to the property and no matter who owns the property, the easement condition remains in effect throughout the life of the easement. The landowner's responsibilities upon establishment of the easement are to comply with its conditions. Essentially, establishing easement will remove development rights from the property and the landowner. The landowner would be initially compensated by DOE-FEMP for establishing the easement. In addition, the landowner would realize a tax benefit, as the value of the property would be reduced due to the lack of development rights. The exact tax benefit of the conservation easement would depend on the specific landowner's situation.

The responsibilities of DOE-FEMP in the establishment of the conservation easement would include providing the landowner with appropriate compensation for granting the easement. Compensation for the easement will be determined through appraisal of the property (see Section 4.0). In addition, DOE must structure the easement so that the property is protected in a manner consistent with the Dispute Resolution Agreement. On behalf of the United States Government (as the holder of the easement), DOE-FEMP or a designated third party would monitor the property on a regular basis pursuant to the conditions of the easement at least annually for the next five years at which time the frequency of monitoring would be re-evaluated.

4.0 ESTABLISHING THE CONSERVATION AREA

Once the property is identified for the conservation area, the landowner(s) would be approached regarding their interest in granting the easement. Assuming that an interested landowner with suitable property is identified, negotiations would commence.

The value of a conservation easement is typically determined through appraisal of the property. The difference in the current market value of the property and the value of the property after the establishment of the easement (i.e., without development and mineral rights) is generally the value of the easement. The value of the easement for establishing the conservation area would have to be negotiated between the U.S. Army Corps of Engineers (ACOE) on behalf of the Federal Government and the property owner. The agreed-upon value of the easement would then be paid by the Federal Government to the landowner. The appraisal of the property would occur after a willing landowner with an acceptable piece of property has been identified and this proposal has been approved by U.S. EPA. The ACOE, as directed by DOE-FEMP, would file all appraisals and other necessary documents.

The criteria outlined in Appendix A will be utilized to determine the most suitable property for the conservation area. Property that is contiguous with the FEMP and contains one or more of the following characteristics will be given the highest priority: wetlands, mid- or late-successional woodlands, historic properties, unique biological diversity (e.g., protected species). As secondary considerations, riparian areas, early successional woodlands, and open areas with contiguous woodlands will be considered. The property that contains most of these characteristics will be targeted for the conservation area.

As discussed above, the conservation easement would be established to protect the ecological characteristics of the property. One of the conditions would be that the landowner would not develop in any manner the property that is subject to the easements. This would include restrictions on clearing, tree cutting, burning, grading, mowing, altering drainage, hunting, trapping, harvesting, public access and the mining of gravel or other minerals. Other appropriate restrictions may be determined upon discussions with the landowner. No restriction on landowner access to the property would be necessary to achieve the goals of the conservation area. Access by DOE-FEMP or other

parties would be mutually agreed upon by DOE-FEMP and the landowner(s). Access would only be necessary to monitor the status of the property and possibly to conduct scientific study of the property as determined appropriate and acceptable by the landowner. DOE-FEMP's goal would be to establish the conservation easement in perpetuity as this provides the maximum protection for the intended use of the property.

5.0 MONITORING

The property established as the Conservation Area must be monitored by DOE-FEMP (on behalf of the Federal Government) or a third party mutually selected by DOE-FEMP and U.S. EPA pursuant to the conditions of the easement. Although the exact schedule for monitoring would be developed by the DOE-FEMP and the landowner, it is anticipated that an initial baseline monitoring event will occur prior to finalization of the conservation easement. The baseline monitoring event will involve a visual assessment of the property to establish the current ecological conditions. Subsequent monitoring events will occur at least annually (depending on negotiations with the landowner) and will involve visual assessments to ensure that all restrictions specified in the conservation easement are being maintained. A semi-annual or annual basis of monitoring is anticipated to be adequate. Monitoring by DOE-FEMP or a designated third party will occur for the first five years of the conservation easement at which time the frequency of monitoring would be re-evaluated. Documentation of the monitoring is anticipated to include photographs and would be maintained by DOE-FEMP or the designated third party on behalf of the Federal Government.

6.0 SCHEDULE AND DELIVERABLES

The schedule for establishing the conservation area is provided in Table 1. The Dispute Resolution Agreement committed DOE-FEMP to the submittal of this proposal to the U.S. EPA by November 21, 1997. This proposal will be made available for public inspection in parallel with the review by the U.S. EPA. The ability to maintain the schedule outlined in Table 1 will be dependent upon negotiations with the landowner(s). If, during the course of this schedule, a change in the status of negotiations with the landowner occurs, DOE will have to negotiate a revised schedule with U.S. EPA.

Three separate tracts of land which are (as a whole) contiguous with the western property boundary were initially identified as being most suitable for a conservation area given the specified selection

criteria. All three landowners were initially contacted by DOE-FEMP to gauge their level of interest in establishing a conservation area. Of the three landowners contacted, one has expressed some interest in the establishment of a conservation area. The tract of land under consideration is west of the FEMP and is approximately 30 acres in size. The tract has a very high ecological value, but is separated from the FEMP property boundary by a separate 10-acre tract of land. ~~This proposal document will be revised based on the EPA's comments and resubmitted in final form in March of 1998 to the EPAs. Assuming that an interested landowner is identified prior to that date, the final proposal document will contain more specific information on the proposed land for the conservation area.~~ The goal for DOE-FEMP in implementing this project is to have the conservation area established by finalizing the easement with the landowner(s) before the end of Fiscal Year 1998. Upon establishment of the conservation area, a final report will be submitted to the EPAs providing the details of the easement and project closeout.

TABLE 1
SCHEDULE FOR CONSERVATION AREA

Activities to Establish Conservation Area	Scheduled Date
Submit Proposal to EPA ¹	11/21/97
EPA Review of Proposal Document ²	11/24/97 - 01/26/97
EPA/Public Review of Final Proposal	03/24/98 - 04/27/98
Property Appraisal and Final Negotiation	04/28/98 - 09/11/98
Purchase Conservation Easement (target date)	09/14/98

¹ Enforceable milestone per the Dispute Resolution Agreement between U.S. EPA and U.S. DOE

² Proposal would be made available for public inspection

7.0 RELATED DOCUMENTS

The establishment of a conservation area near the FEMP will enhance the proposed final land use as outlined in the draft Natural Resource Restoration Plan (NRRP). The NRRP is currently being developed by DOE-FEMP and the other Fernald Natural Resource Trustees and is expected to be finalized in early 1998. The NRRP identifies the majority of the FEMP, outside of the area dedicated for the On-Site Disposal Facility, as an undeveloped park. The NRRP proposes that the remediated Production Area, Waste Pit Area and Southern Waste Units be restored to a natural area taking advantage of the post-excavation topography to the extent possible. The riparian corridor along Paddys Run and the existing Northern Woodlot, which will not be significantly disturbed, would be expanded

and enhanced. A conservation area that is contiguous to or near the restored FEMP site will provide
additional habitat for wildlife and other natural resources that would be protected in the long term.

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APPENDIX A

SELECTION CRITERIA FOR CONSERVATION AREA

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SELECTION CRITERIA FOR CONSERVATION AREA

The following outlines the criteria to be utilized in the selection of a conservation area contiguous to or near the FEMP. ~~Key components of the selection criteria were identified in the Operable Unit 4 Settlement Agreement (denoted by *). Other aspects of the selection criteria have been developed by DOE-FEMP using best professional judgement to identify important ecological factors.~~

1. The U.S. EPA has clearly indicated that the ideal property for the conservation area would be contiguous with the FEMP site* and would comprise 30 to 100 acres*. If contiguous property is not feasible, the selected property should not be more than one mile from the site. Although not required per the settlement agreement, selection of a contiguous tract of land would maximize the benefit of the project with the proposed final land use at the site.
2. Property that contains one or more of the following ecological habitats would be considered most desirable:
 - Wetlands (with forested wetlands given the highest consideration)*
 - Wooded areas in mid- to late-successional phases
 - Property that contains unique biological diversity (e.g., threatened or endangered species)
 - Property that contained historic properties such as archaeological sites.
3. The following are considered secondary characteristics. Property that contains one or more of the following characteristics would be given greater consideration:
 - Riparian Areas*
 - Early successional woodlands
 - Open areas contiguous with wooded areas and/or containing hedgerows.