

ADVOCATES FOR THE OAK RIDGE RESERVATION

Newsletter -- November 2003

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DOE's Gerald Boyd: No More Planning Process, But DOE Values the ORR

AFORR representatives have met with Gerald Boyd, Manager of the Department of Energy (DOE) Oak Ridge Operations, three times since he assumed that position earlier this year -- to welcome him to his new job and to discuss our interests and concerns regarding the Oak Ridge Reservation (ORR). Our discussions also have included members of Tennessee Citizens for Wilderness Planning, Friends of Oak Ridge National Laboratory, Foundation for Global Sustainability, The Nature Conservancy, and other groups.

A continuing concern for AFORR -- and a major topic of our discussions with Boyd -- is the need for comprehensive planning by DOE for the future use of the ORR. Three years ago we pressed DOE to stop making individual land use decisions for separate, discrete parcels of the ORR and to complete a comprehensive environmental impact statement on the whole Reservation. DOE agreed to conduct comprehensive land-use planning with community involvement, but not to prepare an EIS. The first phase of the planning process, the Land-Use Focus Group of 2001-2002, considered only a small part of the ORR. We have been urging DOE to complete the planning process for the nearly 30,000 acres that the Focus Group did not consider.

In our most recent meeting with Boyd (in September), he told us that DOE had decided to evaluate its land holdings internally. DOE's evaluation found that all of the remaining ORR land (outside the area discussed by the focus group) is needed for the agency's mission. DOE uses include safety and security buffers for current operations, ongoing field research, and potential sites for new science facilities expected over the next decade. Because the entire area is needed for the DOE mission, the agency does not see a value in a public planning process for the land and does not plan to conduct one.

It is good news that DOE values the ORR for its mission and is planning for new science projects in Oak Ridge, but we are still concerned that a lack of comprehensive planning could invite more piecemeal decisions regarding ORR tracts that are coveted by developers. Boyd did assure us that ORO had not received, and did not expect, any requests for transfers of any lands not already identified for possible transfer. If DOE receives requests for ORR lands, they would promptly notify AFORR and other interested groups, as well as the public. He also said that DOE intends to renew its current agreement with the State of Tennessee (due to expire in 2006) that provides for the Tennessee Wildlife Resources Agency (TWRA) to manage the Three Bends Area.

We also asked about the status of DOE's natural areas registration agreement with the State of Tennessee, under which DOE agreed to protect seven state natural areas on the ORR. In May 2000 DOE terminated the agreement that had been signed in 1985. At the time, DOE said this was a "housekeeping decision" and that the agreement probably would be quickly reestablished in a different form (see [The Oak Ridger, Friday, May 26, 2000](#)), but this has not happened. Boyd promised to look into the matter.

Progress Report on the Black Oak Ridge Conservation Area

As reported in our February 2003 newsletter, in December 2002 DOE signed an "Agreement in Principle" with the State of Tennessee to place more than 3,000 acres on the western end of the ORR under a conservation easement for an "indefinite period." When the agreement is finalized, the extensive area will be managed by the State of Tennessee for conservation,

research, and recreation. The planned conservation easement represents partial compensation to the people of Tennessee for past DOE pollution of Watts Bar Reservoir. Conservation of this area is part of a National Resource Damage Assessment process under the Superfund law (see [article](#)).

The tract consists of about 2,800 acres on Black Oak Ridge, extending from near Wisconsin Avenue to the Clinch River (southwest of the K-25 Site), plus 235 acres on McKinney Ridge northeast of K-25. This particular area was chosen for conservation because the 2002 report of the Land-Use Focus Group unanimously concluded that this area was not suited for development because of steep slopes and geology, but that it is well-suited for conservation and recreation, with particular value for birds, other wildlife, and native plants. The tract includes the largest contiguous block of forest on the ORR and is an important breeding ground for two dozen migratory bird species "of conservation concern."

The easement is not yet in place. Apparently, one important source of delay is the need to define the specific boundaries. The City of Oak Ridge asked DOE to exclude about 200 acres near Wisconsin Avenue from the conservation dedication so the city might be able to request this land for residential development some time in the future. The exact boundary line between the easement area and the area to be set aside for the city has not yet been determined. AFORR's discussions regarding conservation of part of the adjacent ED-1 (Horizon Center) area also may be a source of delay (see [article](#)).

The Tennessee Department of Environment and Conservation (TDEC) held a listening session on August 5 to hear public views on future management of this land. Jim Evans of TWRA said that his agency would recommend continuation of deer and turkey hunts, would like to open trails for hiking, biking, and nature observation, and would conduct public walks for bird and wildlife viewing. Reggie Reeves, Director of TDEC's Natural Heritage Division, mentioned the opportunity for managing the land as a State Natural Area. Almost everyone who spoke at the meeting expressed enthusiasm about the future possibilities for this area and recommended that the land be left in a natural state, that it not be fragmented by additional roads or widening of existing roads, and that recreation be primarily hiking and nature observation, with motorized recreation prohibited. AFORR submitted written comments to TDEC, recommending that the land be designated as a State Natural Area, that interior ecological fragmentation should be avoided, and that the agencies should allow and encourage low impact public recreational uses such as hiking, birdwatching, regulated hunting, and bicycling on designated trails.

Although four city officials and several Chamber of Commerce representatives were members of the 20-person focus group that identified this area for conservation, it now appears that the Oak Ridge city government may try to limit the conservation easement. At its September 22 meeting the Oak Ridge City Council authorized staff to submit comments to TDEC criticizing the NRDA process (because it did not include the local government as a party) and asking for a further reduction in the area dedicated to conservation. The City Council's resolution noted that some 400 acres of the planned conservation easement are included (together with the 200 acres already being withheld from the easement) in "self-sufficiency Parcel D" (see [article on the self-sufficiency parcels](#)). The City asked that the conservation easement over this 400-acre area be limited to five years' duration so that the city could request the land for development some day. Limiting the duration of the conservation easement would, of course, defeat its purpose and could substantially interfere with state management of the entire tract.

Several members of AFORR and other groups concerned with the local environment spoke up at the City Council meeting. We pointed out that city officials had been party to the focus-group process that identified this area for conservation, we provided some background on DOE's NRDA obligations, and we talked about the conservation area as a future asset in attracting residents and visitors to the city. As a result of our statements, the City Council modified its letter of comment to present a less hostile tone toward the conservation easement, but we can expect local officials and developers to continue to try to get DOE to release portions of this land for development.

Natural Resource Damage Assessment

Under the Superfund law (CERCLA), federal or state officials or Indian tribes appointed as trustees for natural resources can collect financial damages from parties responsible "for injury to, destruction of, or loss of natural resources" following a release of hazardous substances. The process of evaluating damages and compensating for them is called "natural resource damage assessment" (NRDA).

For the purpose of NRDA, damages represent the dollar value of the economic loss resulting from changes in the quality or viability of resources such as drinking water supplies, wildlife habitat, or fisheries. Damages are assessed on the basis of loss or reduction in quantity and quality of natural resource services, including intangibles such as loss of aesthetic values and loss of services to ecosystems. Damages requiring compensation are residual damages -- those that are not addressed or

cannot be addressed by the remedial action selected for the situation. Assessed damages can be compensated monetarily or by payments in kind.

Natural resource trustees can include federal agencies, representatives of an affected State, or affected Indian tribes. There can be multiple trustees for the various natural resources affected by a release.

Past Oak Ridge Reservation releases of contaminants into the Clinch River are natural resource damages requiring compensation because the selected remedy for contamination of the river involves leaving contamination in the reservoir sediments, with restrictions on dredging. Trustees for the damaged resources include the State of Tennessee, the US Fish and Wildlife Service, and the Tennessee Valley Authority. The trustees' assessment of the dollar amount of the damages has not been published, but is believed to be a very large number.

Aiming for a "Win-Win" Land Swap in Horizon Center

Earlier this year, DOE transferred developable tracts in the Horizon Center (formerly known as Parcel ED-1) to the Community Reuse Organization of East Tennessee (CROET). DOE retained ownership of the East Fork Poplar Creek floodplain and other green space not appropriate for development. This green space is supposed to be maintained, protected and monitored as a "natural area."

AFORR has had a continuing concern about one part of the property, Development Area 4, a 35-acre development plot on the west end of the Horizon Center industrial park. Our main concern is with the adverse environmental impacts of constructing road and utility access to this area, which is remote from the rest of the Horizon Center. The proposed access route would follow an existing DOE patrol road for over a mile, crossing Bear Creek three times. Not only would it be expensive to provide access in this way, but valuable recreational and ecological resources would be lost. Converting the one-lane gravel road into a paved industrial access would eliminate recreational use of a popular segment of Oak Ridge's North Boundary Greenway (used by hikers, cyclists, and wildlife enthusiasts). It would also slice through a high-quality ecological habitat, including nesting grounds for the cerulean warbler and other songbird species that are widely recognized as being "of conservation concern."

DOE's draft environmental assessment (EA) for the property transfer ignored the potential effects of providing access to Development Area 4. In response to comments from AFORR and others, the final EA discussed access to this area, but essentially "wrote off" concerns about the impacts. Also, after the transfer we discovered that the property deed had given CROET title to a strip of land cutting across East Fork Poplar Creek and the natural area to connect Area 4 with the rest of the Horizon Center -- something that is specifically precluded by the environmental documentation for the action, including the legally enforceable finding of no significant impact. This last element of the real estate transaction is clearly illegal and must be rescinded.

Instead of challenging the transfer action over these issues, AFORR has been working to engineer a property exchange that would make these issues moot.

In April we approached DOE and CROET with a proposal to discuss the possibility of CROET's trading Area 4 for a comparable amount of DOE land in the west end of the ORR, so that Area 4 and adjacent areas of the floodplain and Horizon Center "natural area" could be reserved for conservation. The right trade could be a "win-win" situation, benefiting both conservation and industrial development.

Conservation would benefit from the protection of a high value area that provides a connection between other areas slated for protection. Area 4 and the associated "natural area" have a total area of more than 100 acres, lying adjacent to and between the Black Oak Ridge and McKinney Ridge portions of the proposed 3,000-acre conservation easement, nearly separating these two areas. Adding this land to the conservation easement would more effectively connect the two ridges and would add bottomland and wetland habitats to the conservation easement area.

Development can benefit if this property -- with its difficult access, resulting high infrastructure costs, and extensive environmental obligations -- can be traded for a more accessible site.

With DOE staff encouragement, AFORR has been working with CROET and City of Oak Ridge personnel to hammer out a possible swap. We reached preliminary agreement on one possible trade, but objections arose, so our discussions continue. Land areas under discussion have included small tracts in Parcel ED-3 (a collection of small tracts near the K-25 site) and a tract on the north side of Oak Ridge Turnpike between Wisconsin Avenue and the Horizon Center. In every case, the lands appear to have less conservation value and greater development potential than Development Area 4.

AFORR, CROET, and the city have spent hundreds of hours of volunteer and staff time and other resources on this matter, and we hope to reach a "win-win" agreement within the calendar year. DOE and the NRDA trustees would then need to consider our proposal.

Background on City of Oak Ridge "Self-Sufficiency Parcels" on the ORR

A recurring theme in discussions of ORR land use is the City of Oak Ridge's claim to certain lands as "self-sufficiency parcels." Furthermore, a few self-sufficiency parcels have been central to some major local controversies of the past two decades, including controversies over the "Boeing tract" (self-sufficiency Parcel E), now being developed as Rarity Ridge, and the "Parcel A" golf course and residential development. To help our members participate more effectively in public discussion of these lands, AFORR has delved into the history and purpose of the "self-sufficiency" designations.

Ever since Oak Ridge was incorporated in 1959, there was a desire to wean the city from federal government financial assistance. Direct assistance payments under the Atomic Energy Communities Act (AECA) began in 1960 and were supposed to end after ten years, but DOE and other communities received several extensions because progress toward "self-sufficiency" was slower than Congress and federal agencies had hoped for.

From the beginning, land for development was considered an important means by which the federal government could help the community become self-sufficient. The original city area included several large undeveloped tracts for future use, and subsequent transfers added to this base. For example, a 1966-1967 city study of potential industrial sites led to the city's obtaining 230 acres for the Valley Industrial Park in Union Valley and TVA's acquisition of the 1,560-acre tract that were later designated as the site for the Clinch River Breeder Reactor (which was never built).

A five-year financial assistance agreement signed in 1980 was aimed at accelerating progress toward economic independence. It required DOE and the city to jointly implement a self-sufficiency plan under which some federal funds were targeted to boost commercial and industrial development. Among the other provisions requested by the city was transfer of additional federal land to the city for industrial, commercial, and residential use. DOE determined that land excess to DOE's needs could legally be transferred to the city at fair market value rather than being handled through the U.S. General Services Administration (the normal method for disposal of excess federal property).

At some point during the agreement period, twenty-two parcels of land totaling approximately 10,405 acres were identified as possible candidates for transfer if they became excess. Apparently, the city and the local business community initially identified these parcels based on their perceived development potential. It is unlikely that DOE assembled this list, as it includes some waste-disposal sites and other properties that were in active use and unlikely to be suitable or available for commercial transfer. In any event, DOE agreed to the list and these lands have come to be known as the "self-sufficiency parcels" (see [figure](#)). When the agreement ended in 1985, it reportedly was agreed (this is not documented in the signed contract between DOE and Oak Ridge) that the remaining self-sufficiency parcels in government ownership would be "grandfathered," permitting DOE to transfer them to the city at fair market value if the lands became excess to DOE needs.

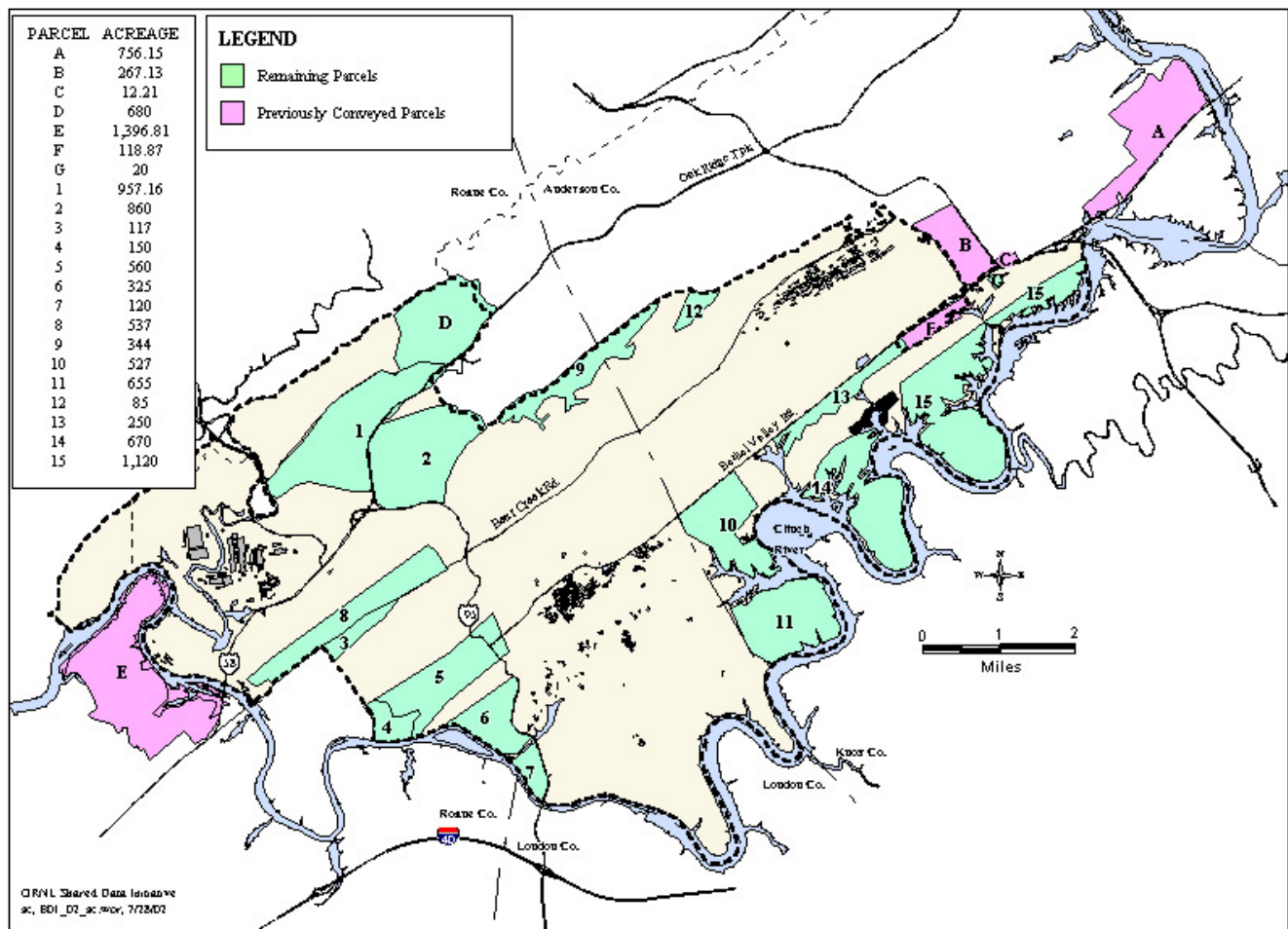


Fig. B.1. Oak Ridge Reservation self-sufficiency parcels.

DOE has conveyed five of the self-sufficiency parcels (some 2,371 acres) to the city and one (about 1000 acres) to the Community Reuse Organization of East Tennessee (CROET). **Parcel F** was sold to the city near the beginning of the 5-year contract. It became the site of Bethel Valley Industrial Park, which is near full occupancy and is considered to be doing well. **Parcel B** was conveyed to Martin Marietta Corporation in the mid-1980s when that company assumed the DOE operating contract for local facilities. The Commerce Park industrial park, which opened in 1987, occupies this site. A little less than two-thirds of this site (171 of 267 acres) is occupied. **Parcel C** was initially sold to the developers of Commerce Park, was later sold to Faith Promise Church for a new building, and now is vacant and on the market after the church decided to build elsewhere. **Parcel E** was sold to the city in 1987 for transfer to the Boeing Company, which planned to build an industrial facility. That project never materialized, and in 2001 Boeing sold the land to a real estate developer. DOE sold the same developer a strip of land adjacent to the river which DOE had not sold earlier, and the developer is now building a residential-commercial subdivision ("Rarity Ridge") on the property. **Parcel A** was sold to the city in the 1990s, and the city decided to establish a golf course and residential development on it. The city-owned Centennial Golf Course is operating, but much of the residential land is still unsold, the golf course requires taxpayer subsidies, and the project is a continuing source of community controversy. In the mid-1990s **Parcel 1** became known as "ED-1" and was leased in 1997 to the Community Reuse Organization of East Tennessee (CROET) for industrial development. Earlier this year title to the developable portion was transferred to CROET. CROET is building the Horizon Center industrial park on this property and so far has just one tenant (Theragenics), which earlier this year was reported to have just seven employees. Additionally, **Parcel G** has been identified for transfer to the city, but action has not been concluded.

The track record on effective development of pre-1980 federal land transfers also is poor. Of the transfers that ensued from the 1966-1967 land study, the only successful development project is the Valley Industrial Park (east of Y-12), which is home to several office buildings and small industrial facilities. The adjacent Pine Ridge property, which was deemed to be undevelopable because of its extremely steep slopes, was sold to the city together with the Valley Park area. It remained largely vacant -- and most people assumed it would remain that way forever -- until 2001. That was the year that a local developer created a firestorm of controversy by clear-cutting the forest and flattening the ridgetop, ostensibly to create industrial building sites. This site is still vacant and probably will not be attractive to tenants because of the extensive fill in

portions of the site. The Clinch River Industrial Park property that was transferred to TVA in that same era is still almost completely vacant.

The high cost of providing infrastructure to remote locations has been one hindrance to development of the DOE lands that have been released. For example, it is estimated that installation of utilities to serve various tracts in west Oak Ridge will cost over \$15 million, probably from taxpayers.

A new [DOE regulation](#) issued in February 2000 appears to have made the self-sufficiency designations irrelevant. DOE regulation [10 CFR 770](#) removes the former restrictions on DOE transfers of real property that is excess to federal needs. Now such property may be transferred for economic development purposes at less than fair market value (meaning it could be given away rather than sold), with no apparent limitations on the entities that can receive the property. Thus, there is no clear advantage to the City of Oak Ridge from the old arrangement that permitted DOE to sell certain properties to the city at fair market value.

In spite of the financial disadvantages of the self-sufficiency parcel arrangement and the overall poor track record on development of lands that have been conveyed in the past, the city continues to insist that it has "right of first refusal" on the self-sufficiency parcels and continues to protest DOE decisions to use these lands for federal purposes such as natural resource damage mitigation (see [article about Black Oak Ridge](#)).

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