

Rec'd 9/30/03

CITY OF
OAK RIDGE



OFFICE OF THE MAYOR

POST OFFICE BOX 1 • OAK RIDGE, TENNESSEE 37831-0001

September 24, 2003

The Honorable Betsy Child
Commissioner
Tennessee Department of
Environment and Conservation
401 Church Street
L & C Tower
21st Floor
Nashville, TN 37243-0435

Gerald Boyd
Manager
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, TN 37831-0001

Comments on the Proposed Black Oak Ridge Area, ORR Conservation Easement Pursuant to the Natural Resources Damages Assessment (NRDA)

Dear Commissioner Child and Mr. Boyd:

On September 22, 2003, the Oak Ridge City Council adopted the enclosed resolution, Number 9-110-03 regarding the disposition of approximately 3,073 acres of Black Oak Ridge, located within the corporate limits of Oak Ridge, Tennessee. The resolution authorizes the transmittal of the enclosed document entitled *Comments on the Proposed Black Oak Ridge Area, ORR Conservation Easement Pursuant to the Natural Resources Damages Assessment (NRDA)* as the official comments of the City of Oak Ridge.

The City understands that the conservation easement, announced in late December 2002, is being established by DOE pursuant to CERCLA (Superfund) as partial mitigation of natural resources damages to the Clinch River and Watts Bar Reservoir.

A large state-managed natural area within the city has many possibilities and potentialities and will aid in maintaining the quality of the natural environment in nearby greenbelts and residential areas. Increased public access to this area for recreation should be an attraction to both residents and visitors.

However, it is important to ensure that this action does not inadvertently turn into a negative for the City. The proposed easement boundaries, the management of the area, and the NRDA process are all issues of vital importance to the City of Oak Ridge.

Honorable Betsy Child
Mr. Gerald Boyd
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A set of draft comments was provided to state representatives at the August 5, 2003 state-sponsored public meeting in Oak Ridge. The enclosed comments incorporate these, as well as additional issues identified by staff, and recommendations of the City's Environmental Quality Advisory Board.

On behalf of the City, I appreciate your consideration of the comments, and your willingness to address the City's concerns on this precedent-setting proposal. Should you have any questions, feel free to contact Gary Cinder, Interim City Manager, at (865) 425-3550 or Amy Fitzgerald, Government and Public Affairs Coordinator, at (865) 425-3554.

Sincerely,



David R. Bradshaw
Mayor

Enclosures

cc w/ enclosures: Congressman Zach Wamp
John Owsley, TDEC, Division of DOE-Oversight
Jason Darby, U.S. Department of Energy
Steven Alexander, U.S. Fish and Wildlife Services
Mark Hastings, Tennessee Valley Authority
Marsha White, TDEC NRDA Coordinator

RESOLUTION

WHEREAS, the U.S. Department of Energy (DOE), the State of Tennessee (State), and other Natural Resource Damages Trustees have been engaged in discussions and negotiations concerning natural resource injuries arising from DOE's activities on the Oak Ridge Reservation (ORR) pursuant to the Natural Resource Damages Assessment (NRDA) provision of the federal Superfund law; and

WHEREAS, as part of an effort to reach a fair and equitable settlement of remaining issues, DOE has agreed to grant the State a conservation easement on approximately 3,000 acres of land on the ORR for the establishment of natural and wildlife management areas; and

WHEREAS, the 3,000 acres is identified by the State and DOE as *The Black Oak Ridge Area, ORR*, which is located entirely within the corporate limits of the City of Oak Ridge; and

WHEREAS, the 3,000 acres also incorporates a portion of the City's Self-Sufficiency Parcel D, which the City has previously requested from DOE in order to construct new housing units to help reduce the City's dependency on the federal government; and

WHEREAS, the State is soliciting comments and suggestions toward the development of a management plan for *The Black Oak Ridge Area, ORR*; and

WHEREAS, the City of Oak Ridge desires to officially comment to DOE and the State and has prepared comments and recommendations for consideration in the determination of the final boundary, in relation to the process by which NRDA is conducted, and in the preparation of the management plan; and

WHEREAS, the City of Oak Ridge's Environmental Quality Advisory Board (EQAB) has prepared a report to City Council with comments and recommendations; and

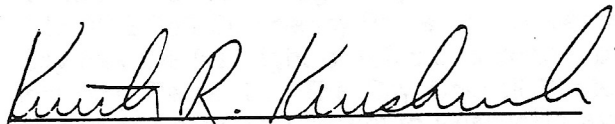
WHEREAS, the City Manager recommends transmittal of the attached document entitled *Comments on the Proposed Black Oak Ridge Area, ORR Conservation Easement Pursuant to the Natural Resources Damages Assessment (NRDA)* to DOE.

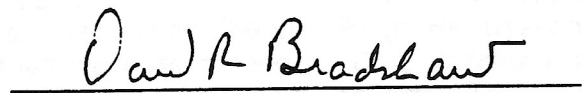
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCILMEN OF THE CITY OF OAK RIDGE, TENNESSEE:

That the recommendation of the City Manager is approved and the attached comments entitled *Comments on the Proposed Black Oak Ridge Area, ORR Conservation Easement Pursuant to the Natural Resources Damages Assessment (NRDA)* be transmitted to the U.S. Department of Energy and the State of Tennessee as the official comments of the City of Oak Ridge.

This the 22nd day of September 2003.

APPROVED AS TO FORM AND LEGALITY:


City Attorney


Mayor


City Clerk

**Comments on the Proposed Black Oak Ridge Area, ORR Conservation Easement
Pursuant to the Natural Resources Damages Assessment (NRDA)**

Submitted by the City of Oak Ridge, Tennessee
September 22, 2003

NRDA Process

1. The NRDA process provides for the designation of federal and state government trustees, but does not appear to have a provision for the appointment of a local government "trustee." As a result, the City was unaware of the activities of the NRDA Trustee Council until an Agreement in Principle (AIP) was signed between the Governor and DOE Management in late December 2002. While there may be support for the proposed conservation easement, the City is concerned that this very important decision regarding land use within the corporate limits of Oak Ridge was made without the knowledge of, or input from the officials elected to represent community interests. Several members of DOE's Oak Ridge Land Use Planning Focus Group that recommended land areas for conservation had an affiliation with the City; however, the views of these individuals did not indicate endorsement of the group's final report by Oak Ridge City Council. **As a result, the City seeks participation in the NRDA process to ensure community issues are identified and addressed as the trustees seek the recovery of natural resource damages.** Participation by the City is critical for a number of reasons, particularly since the trustees consider the proposed conservation easement *only the first in a number* of subsequent actions pursuant to the NRDA. Given that the proposed action is partial mitigation for damage that occurred *outside* the City of Oak Ridge, constituents have raised questions regarding why the proposed mitigation is conducted with land *inside* the City of Oak Ridge. Similarly, the trustees anticipate future mitigation for damages that have occurred on land within the city limits. The City should be engaged in NRDA land use discussions that impact the City's ability to expand its tax base, and hamper the City's attempt to achieve greater self-sufficiency.

2. It is unclear whether the proposed action has been analyzed pursuant to the National Environmental Policy Act (NEPA). Since a management plan has not yet been developed, a categorical exclusion--if one has been issued--appears to be inappropriate in this case. The management plan may include activities that have an impact on the environment. The proposed action of conserving more than 3000 acres is likely to be considered a major federal action, which results in socioeconomic and ecological impacts that need to be analyzed.

Conservation Easement Boundary

1. The 3,073-acre area proposed for a conservation easement between the State and DOE is within the Oak Ridge City limits and encompasses a significant portion of the 662-acre City/DOE Self-Sufficiency Parcel D. Under the City's self-sufficiency agreement with DOE, the City has the first right of refusal to certain parcels of land within the Oak Ridge Reservation, including Parcel D. The City Council Strategic Plan identifies a need for DOE to release a portion of Parcel D adjacent to Wisconsin Avenue for development of new housing. Thus, the boundaries of the easement should reflect the previous self-sufficiency commitment by DOE regarding the conveyance of Parcel D to the City. For the purposes of the proposed easement, the City does not relinquish its right of first refusal for Parcel D; rather the City supports a five-year agreement for the inclusion of approximately 417 acres of Parcel D in the proposed easement, and the conveyance of the remainder, approximately 245 acres, to the City for housing.

2. The configuration of the proposed easement needs make reasonable accommodations for ongoing development of the Westwood Subdivision. Such accommodation includes a secondary access to the subdivision that is required by City regulations. Should DOE convey the 245 acres of Parcel D, the secondary access could be located within this parcel.
3. The configuration needs to consider the Roane County/City of Oak Ridge Planned Growth area, as adopted pursuant to Public Law 1101. This area is vital to the systematic growth in the West End of Oak Ridge.
4. Based on the map that accompanied the State's "Notice of Public Meeting," it is unclear whether the North Boundary Greenway borders the boundary or is a part of the proposed conservation easement. This issue should be clarified.

Management Plan

1. The management plan needs to have a provision stating that DOE shall maintain the ownership of land to ensure ongoing, *and possible expansion of* payments in lieu of taxes (PILT) to the City and Roane County.
2. The management plan needs to address the regular assessment and removal of dead trees and brush that could pose a safety hazard to nearby residential, commercial, and industrial properties. Residents in that area of the City have raised concerns that trees killed by pine beetles could pose a fire hazard.
3. The management plan should clarify whether DOE plans to continue maintaining the Greenway, which doubles as a security patrol road or whether maintenance will be performed by the State. The management plan should allow the potential to create additional trails within the easement that would or could be linked to the existing Greenway trail.
4. A large state-managed natural area within Oak Ridge could serve as a reservoir for flora and fauna, thus aiding in maintaining the quality of the natural environment in greenbelts and residential areas. Increased public access to this area for recreation could benefit both residents and visitors. However, it is important to ensure that this does not inadvertently turn into a negative for the City. Specific recommendations with respect to the management of this area to ensure the quality of the City's environment are:
 - Like Oak Ridge city greenbelts, the area should be managed to maintain a natural state.
 - The public greenway on the patrol road on the perimeter of this area should remain open for non-motorized recreation.

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- Managed hunting needs to continue in this area to help control the deer population.
- Residents and businesses adjoining this area should have avenues open to them to express concerns that may arise regarding the area's management or the behavior of its users.