

Advocates for the Oak Ridge Reservation

136 West Revere Circle
Oak Ridge, Tennessee 37830

April 29, 2004

Gerald Boyd, Manager
Department of Energy
Oak Ridge Operations
P. O. Box 2001
Oak Ridge, TN 37831

Dear Mr. Boyd:

On behalf of Advocates for the Oak Ridge Reservation (AFORR), we regret to inform you that we have reached an impasse in our effort to negotiate a mutually acceptable proposal to DOE for a "land swap" with the Community Reuse Organization of East Tennessee (CROET).

As you are already aware, our organization would like Development Area 4 at the west end of the Horizon Center and associated lands (that is, access corridors and portions of the Horizon Center exclusion zone that adjoin this parcel) to be included in the Black Oak Ridge conservation easement. We refer to the easement to be established under the Agreement in Principle between DOE and the State of Tennessee resulting from the Natural Resources Damage Assessment for contamination of Watts Bar Reservoir. These lands are ecologically important, particularly in combination with the adjoining tracts on Black Oak Ridge and McKinney Ridge that are to be included in the 3000-plus-acre conservation easement.

AFORR believes that it should not be difficult to identify other DOE-controlled lands of equivalent development value that could be swapped for the approximately 37 acres in Development Area 4. Moreover, in our opinion DOE is vulnerable to a National Environmental Policy Act (NEPA) legal challenge in connection with deeding this parcel to CROET. This vulnerability is the result of the finding of no significant impact (FONSI) for the transfer of Parcel ED-1 (i.e., the Horizon Center) to CROET. It is the opinion of many that the FONSI was based on an environmental assessment (EA) that did not adequately consider the potential for significant adverse environmental impacts from developing Development Area 4 and associated road and utility access.

With your knowledge and support, in April 2003, AFORR initiated discussions with CROET President Lawrence Young with the aim of reaching agreement on a potential swap of other DOE lands in exchange for Development Area 4. We saw an opportunity for a "win-win" solution in which an ecologically valuable tract would be conserved, and at the same time CROET would

gain land with more value for near-term economic development. In pursuit of such a resolution, we met with Mr. Young on a total of 10 occasions (April 16, April 29, June 12, August 21, September 24, October 14, October 24, and November 13, 2003 and February 6 and March 16, 2004). At least three of these meetings also involved representatives of the City of Oak Ridge. In addition, CROET representatives met separately with City personnel on September 16, 2003.

Early in this process Mr. Young expressed some interest in a DOE parcel located on Oak Ridge Turnpike west of Wisconsin Avenue. This parcel was similar in size to Development Area 4, and AFORR, DOE, and City officials expressed their support for swapping it for Development Area 4. However, several months into the process, City officials raised objections to CROET's acquiring portions of this land. Further discussions with the City indicated that City representatives thought that there was sufficient land along the Oak Ridge turnpike to satisfy both the City's needs and CROET's development needs. Mr. Young, however, subsequently told us he was no longer interested in that area, but only in the ED-3 parcel.

Subsequent discussions focused primarily on the parcel ED-3 area. AFORR offered to withdraw its past objections to transferring portions of ED-3 east of the Heritage Center and north of Highway 58, in exchange for CROET's relinquishing the 37-acre parcel in the Horizon Center. In addition, DOE generously offered to relieve CROET from responsibility for environmental monitoring of natural areas associated with Development Area 4. However, CROET adopted and firmly held the position that the only exchange acceptable to them would be one that would give them almost all of the developable land in ED-3. CROET's own analysis indicated that the developable portion of the requested tracts had about three times (nearly 100 acres) the acreage of the 37-acre parcel in Horizon Center. The CROET President repeatedly stated that his position was "intractable" (his words) in insisting on this total package.

AFORR considers the final CROET request to be completely unreasonable. The 37-acre parcel for which AFORR is asking is remote, is adjacent to neither other developable sites nor existing infrastructure, and would require the construction of almost 2 miles of new access road and three bridges. In exchange for this parcel, CROET demands a vastly larger tract of land that has a much higher value per acre.

Not only is Mr. Young's request for an area nearly three times as large as the area CROET would be giving up, but it is far more attractive for economic development. The land that Mr. Young requested has immediate highway access near a major intersection (Blair Road), is close to existing utility lines at the ETTP Heritage Center and other developed sites, and abuts additional developable land on Highway 58 (ED-4). In contrast, the 37-acre parcel that CROET would be relinquishing would require about two miles of new access roads and would include three stream crossings that would require the destruction of old inadequate bridges and the construction of new bridges, with attendant disturbance to Bear Creek.

Please note that AFORR's proposal regarding development by CROET of portions of ED-3 land north of Highway 58 that are of equivalent value to Development Area 4 is consistent with Scenario 4 as developed in the Final Report of the Oak Ridge Land Use Planning Focus Group. This option received the most favorable rating of the four scenarios considered, when all members of the Focus Group were asked to vote their preference (See Appendix D, page D-2 of the Final Report of the Oak Ridge Land Use Planning Focus Group, 02-182(doc)/091202, September, 2002). On the other hand, the request made by CROET's president matches the plan for ED-3 described in Scenario 2 ("High Development"). Focus Group members voted this option as the least favorable.

AFORR is frustrated to have reached this stalemate in our efforts to conserve this small but ecologically significant 37-acre tract and its access. We believe that CROET's lack of flexibility in this matter has placed DOE in a vulnerable legal position with regard to NEPA. Neither DOE's original EA nor the EA Addendum for the transfer of Parcel ED-1 gave realistic consideration to the environmental impacts of creating access to Development Area 4.

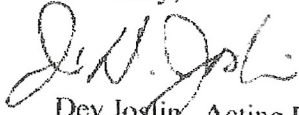
Development of access to Development Area 4 would include converting nearly two miles of a narrow one-lane DOE gravel patrol road to a multi-lane paved roadway and installing three bridges across streams. The patrol road traverses ecologically valuable habitat for threatened species. This land could also serve as a connecting corridor between the Black Oak Ridge and McKinney Ridge portions of the conservation easement. Furthermore, it is a designated and very popular Oak Ridge public greenway and is adjacent to an important wetland. Thirteen separate organizational and individual commenters on the Draft EA Addendum raised concerns about this aspect of the transfer, but the final EA and FONSI declared that there would be no significant impact. They did so without addressing the specific environmental concerns or prescribing mitigation. Furthermore, this transfer action reminds us of the NEPA concerns related to broader Oak Ridge Reservation land use that AFORR and other organizations raised with DOE in January 2001.

Also, we note that DOE is still in the embarrassing situation of having deeded to CROET a second right of way corridor to Development Area 4, across the Horizon Center Exclusion Zone. This transfer directly contravenes the FONSI for the transfer, and when AFORR and others brought this situation to your staff's attention in the summer of 2003, all agreed that it needed to be reversed. At that time, your staff had hoped to process this reversal as part of the same real estate transaction that would have implemented the land exchange being negotiated by AFORR and CROET. In view of the unfortunate failure of our negotiations, DOE must without delay withdraw the transfer of the corridor across the Exclusion Zone, independently of any other transactions. The news that CROET is considering deeding the Horizon Center to another party (*The Oak Ridger*, April 22, 2004) makes it particularly urgent to resolve this matter quickly.

AFORR is disappointed and frustrated by the failure of our efforts to conserve this small but significant parcel and its access. We urge DOE to pursue an exchange that resolves the

department's NEPA vulnerability and satisfies both environmental and economic interests of the public. We still believe that a "win-win" solution is achievable.

Sincerely,



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