

**APPENDIX D**  
**COPIES OF CONSULTATION LETTERS**





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

August 21, 2001

Certified Mail  
Return Receipt Requested

4WD-FFB

Susan M. Cange  
Reindustrialization Liaison  
Office of Assistant Manager for Environmental Management  
U.S. Department of Energy  
Oak Ridge Operations  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

**SUBJECT: Section 120 (h) (4) (B) determination for Parcel ED-1 at the East Tennessee  
Technology Park (ETTP)**

Dear Ms. Cange:

Per your request, EPA has review the documentation related to the Comprehensive Environmental Response, Compensation, and Liability (CERCLA) Section 120 (h) (4) (B) clean parcel determination for Parcel ED-1 and EPA's associated concurrence. Based on the review, EPA believes the proper documentation was submitted by the Department of Energy (DOE) to support a "clean parcel" determination for parcel ED-1 excluding East Fork Poplar Creek and Bear Creek and their associated floodplains. Based on our August 2, 1995 letter (Mr. Weeks to Mr. Lingle), DOE has EPA's CERCLA Section 120 (h) (4) (B) concurrence for Parcel ED-1 excluding East Fork Poplar Creek and Bear Creek and their associated floodplains.

If you have questions concerning this matter, contact me at 404-562-8513.

Sincerely



John Blevins  
Oak Ridge Project Manager

cc: Pat Halsey, DOE-ORR  
Oak Ridge SSAB  
Oak Ridge LOC  
Doug McCoy, TDEC  
Thomas Gebhart, TDEC  
Tim Fredrick, GF  
Myrna Redfield, DOE-ORR  
Connie Jones, EPA  
Donna Perez, DOE-ORR  
Jim Kopotic, DOE-ORR



**TENNESSEE HISTORICAL COMMISSION**  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
2941 LEBANON ROAD  
NASHVILLE, TN 37243-0442  
(615) 532-1550

May 24, 2002

Mr. David Allen  
Department of Energy  
Oak Ridge Operations Office  
Post Office Box 2001  
Oak Ridge, Tennessee 37831

RE: DOE, DRAFT ENVIRONMENTAL ASSESSMENT ADDENDUM, TRANSFER OF PARCEL  
ED-1 TO CROET, OAK RIDGE, ROANE COUNTY, TN

Dear Mr. Allen:

At your request, our office has reviewed the above-referenced draft environmental assessment addendum in accordance with regulations codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739). Based on the information provided, and in accordance with our previous review of the archaeological survey of the area of potential effect, we find that the project area, as currently defined, contains no archaeological resources eligible for listing in the National Register of Historic Places.

This office has no objection to the implementation of this project. However, prior to transfer, and in accordance with our correspondence of April 29, 2002; please submit the proposed final deed restrictions to this office for our review and comment. If project plans are changed, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

Your cooperation is appreciated.

Sincerely,

Herbert L. Harper  
Executive Director and  
Deputy State Historic  
Preservation Officer

HLH/jmb

OFFICIAL FILE COPY  
AMESQ

Log No. 63093

Date Received JUN 3 2002

File Code \_\_\_\_\_



**TENNESSEE HISTORICAL COMMISSION**  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
2941 LEBANON ROAD  
NASHVILLE, TN 37243-0442  
(615) 532-1550

September 5, 2002

Mr. Gary S. Hartman  
Oak Ridge Operations/DP-80  
Post Office Box 2001  
Oak Ridge, Tennessee, 37831

RE: DOE, TRANSFER/PARCEL ED-1, OAK RIDGE, ANDERSON COUNTY

Dear Mr. Hartman:

In response to your request, received on Monday, August 26, 2002, we have reviewed the documents you submitted regarding your proposed undertaking. Our review of and comment on your proposed undertaking are among the requirements of Section 106 of the National Historic Preservation Act. This Act requires federal agencies or applicant for federal assistance to consult with the appropriate State Historic Preservation Office before they carry out their proposed undertakings. The Advisory Council on Historic Preservation has codified procedures for carrying out Section 106 review in 36 CFR 800. You may wish to familiarize yourself with these procedures (Federal Register, December 12, 2000, pages 77698-77739) if you are unsure about the Section 106 process. You may also find additional information concerning the Section 106 process and the Tennessee SHPO's documentation requirements at [www.state.tn.us/environment/hist/sect106.htm](http://www.state.tn.us/environment/hist/sect106.htm).

Based on available information, we concur that the project as currently proposed will NOT ADVERSELY AFFECT ANY NATIONAL REGISTER OF HISTORIC PLACES-LISTED PROPERTY SO LONG AS THE FOLLOWING CONDITION(S) ARE MET:

The covenant language contained as an attachment to your letter dated August 22, 2002 is made a part of the transfer document and run continuously with the land in perpetuity.

Unless project plans change, and so long as the condition is met, this office has no objection to the implementation of this project. Should project plans change, please contact this office to determine what additional action, if any, is necessary. Questions and comments may be directed to Joe Garrison (615) 532-1559. Your cooperation is appreciated.

Sincerely,

  
Herbert L. Harper  
Executive Director and  
Deputy State Historic  
Preservation Officer

HLH/jyg

OFFICIAL FILE COPY  
AMESQ

76827  
Log No. \_\_\_\_\_  
Date Received **SEP 13 2002**  
File Code \_\_\_\_\_



## Department of Energy

Oak Ridge Operations Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831—  
August 2, 2002

Dr. Lee A. Barclay, Ph.D.  
Field Supervisor  
U. S. Fish and Wildlife Service  
446 Neal Street  
Cookeville, Tennessee 38501

Dear Dr. Barclay;

**INFORMAL CONSULTATION UNDER SECTION 7 OF THE ENDANGERED SPECIES ACT FOR THE PROPOSED TRANSFER OF A PORTION OF PARCEL ED-1 OF THE OAK RIDGE RESERVATION TO THE COMMUNITY REUSE ORGANIZATION OF EAST TENNESSEE**

As promised in our initial letter (dated April 22, 2002) and at our meeting on June 24, 2002, concerning the subject action, please find enclosed a copy of the Quit Claim Deed conditions that apply to listed species. Especially note condition (10) that is included to protect any Indiana bats that might inhabit the parcel.

In response to your letter of June 6, 2002 and our subsequent meeting, the Department of Energy (DOE) has decided to modify the proposed action to the transfer of the developable portion of the parcel only. Therefore, the Natural Area segment of the parcel is proposed to remain as it is, as a lease to Community Reuse Organization of East Tennessee (CROET) from DOE. This will allow greater control of the Natural Area by DOE and should answer your major concerns about the transfer's potential effect on listed species that could be present on the parcel. The draft Environmental Assessment Addendum and Mitigation Action Plan will be revised to reflect responses to these and other comments as part of the National Environmental Policy Act (NEPA) process.

This proposed action has great community interest and anything you could do to expedite your review and concurrence would be appreciated. If you need further information, please call me at (865) 576-0938.

Sincerely,

A handwritten signature in dark ink, appearing to read "James L. Elmore".

James L. Elmore, Ph.D.  
Alternate NEPA Compliance Officer

Enclosure

cc w/enclosure:  
David Allen, SE-30-1  
Nancy Carnes, CC-10  
Susan Cange, AU-61  
Katy Kates, AD-42

**Draft Quitclaim Deed Conditions to be Provided to the  
Fish and Wildlife Service and State Historic Preservation Office**

(4). Covenanting to the GRANTOR, its successors and assigns, the promissory right and license on the part of the GRANTEE, to permit the GRANTOR reasonable access as shown on Exhibit "A" on, over and through the property for the purposes of assuring and/or accomplishing appropriate mitigation and monitoring actions on abutting GRANTOR property.

(5). Reserving to the GRANTOR, its successors and assigns, the continuing rights to access, use, sample, and maintain GRANTOR's existing monitoring well system located on the premises. The monitoring wells and access routes to reach the wells for sampling are shown on Exhibit "A".

(6). The GRANTOR reserves an easement to itself for the right of access along the existing ingress/egress roads shown on Exhibit "A".

(7). All activities and development of the land by the GRANTEE, its successors and assigns shall 1) be consistent with those land uses analyzed in the Environmental Assessment dated April 1996 and set forth in the Addendum to the Environmental Assessment; and 2) be consistent with the GRANTEE's proposal to the GRANTOR which was approved by the GRANTOR on \_\_\_\_\_. Said land uses are set forth in Exhibit "B" to this Quitclaim Deed.

(8). Activities on the premises herein conveyed which cause a significant adverse impact to the Natural Area on GRANTOR's abutting land shall be mitigated by the GRANTEE.

(9). Any and all construction which may occur within any floodplain or floodway or which might affect a floodplain must comply with applicable Federal and State laws with respect to said construction and must be consistent with the Federal Facilities Agreement requirements.

(10). The land herein conveyed shall be used in a manner consistent with the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.). Specifically, the habitat for the endangered Indiana bat should be protected by retaining trees with exfoliating bark whenever possible. Should circumstances require cutting of those trees, they should not be cut between April 15 through September 15 unless the required processes of consultation with the Fish and Wildlife Service are followed.

(11). GRANTEE shall protect any historical and/or archaeological cultural resources which may be discovered on the premises subsequent to the date of this conveyance and shall comply with the procedures set forth in attached Exhibit "C".

(12). The GRANTEE, its successors and assigns, shall fence and protect any existing cemeteries that may be located on the property herein conveyed and said cemeteries shall remain in their same location as a separate land unit. GRANTEE shall not impede reasonable public ingress and egress to any such cemeteries.

(13). The GRANTEE, its successors and assigns, shall comply with all applicable Federal, State, and local laws and regulations with respect to any present or future development of the property herein conveyed, including, but not limited to, those laws and regulations which govern sewage disposal, facilities, water supply, and other public health requirements. All structures, facilities, and improvements requiring a water supply shall be required to be connected to an appropriate regulatory approved water system for any and all

usage. GRANTEE covenants not to extract, consume, expose, or use in any way the groundwater underlying the property or water from any streams located on the property without the prior written approval of the GRANTOR, the United States Environmental Protection Agency (EPA), and the Tennessee Department of Environment and Conservation

(14). GRANTOR holds harmless and indemnifies GRANTEE as set forth in, and subject to the limitations, terms and conditions of Exhibit "D" to this Quitclaim Deed.

(15). The GRANTOR acknowledges that the Oak Ridge Reservation has been identified as a National Priority List Site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The GRANTEE acknowledges that the GRANTOR has provided it with a copy of the Oak Ridge Reservation Federal Facility Agreement (FFA) and relevant amendments entered into by the United States Environmental Protection Agency Region 4, the Tennessee Department of Environment and Conservation, and the GRANTOR effective on January 1, 1992. The GRANTEE agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended and terms of this deed, the terms of the FFA will take precedence. If the property, or any portion thereof, within this conveyance is removed from the National Priority List under CERCLA, and the Environmental Protection Agency and the Tennessee Department of Environment and Conservation agree in writing that the property, or any portion thereof, within this conveyance may be released from the terms of this condition, then this condition shall no longer apply. The GRANTOR has accomplished appropriate reviews under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. Pursuant to CERCLA 120(h)(4)(D), the GRANTOR warrants that any response action or corrective action found to be necessary after the date of this conveyance shall be conducted by the GRANTOR. The GRANTEE, its successors and assigns, hereby grants to the GRANTOR a right

of access to the property in any case which a response action is found to be necessary or such access is necessary to carryout a response action or corrective action on adjoining property.

(17). The parties hereto intend that, other than the indemnification addressed in Condition No. 14 as further set forth in Exhibit "D" to this Quitclaim Deed, the reservations, restrictions and covenants herein, shall run with the entire parcel of land conveyed and be binding upon the GRANTEE, its successors and assigns, or any other person acquiring an interest in the property.



## Department of Energy

Oak Ridge Operations Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831—

August 23, 2002

Dr. Lee A. Barclay, Ph.D.  
Field Supervisor  
Fish and Wildlife Service  
446 Neal Street  
Cookeville, Tennessee 38501

Dear Dr. Barclay:

**INFORMAL CONSULTATION UNDER SECTION 7 OF THE ENDANGERED SPECIES ACT FOR THE PROPOSED TRANSFER OF PARCEL ED-1 OF THE OAK RIDGE RESERVATION TO THE COMMUNITY REUSE ORGANIZATION OF EAST TENNESSEE**

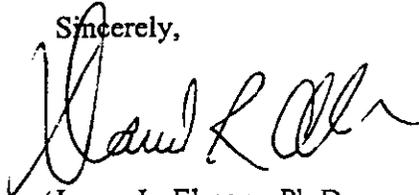
This letter is a follow-up to our phone conversation on Friday, August 16, 2002, regarding informal consultation under Section 7 of the Endangered Species Act for the proposed transfer of a portion of Parcel ED-1. The Department of Energy (DOE) has decided to transfer only the developable portions of Parcel ED-1 to Horizon Center LLC, a subsidiary of the Community Reuse Organization of East Tennessee (CROET). Ownership of the Natural Area will remain with DOE and will be leased to Horizon Center, LLC. The decision to transfer the developable portion of Parcel ED-1 was based on public and agency comments, including the comments submitted by the Fish and Wildlife Service dated June 6, 2002. The fact that DOE is retaining ownership of the Natural Area should alleviate the concerns expressed regarding its protection.

The requirement that Horizon Center, LLC monitors the Natural Area and perform mitigation, if necessary will be in the lease agreement. Although implementation of the Mitigation Action Plan will be the responsibility of Horizon Center, LLC, oversight will be provided by DOE. In addition, requirements to ensure that development activities do not adversely impact the Natural Area are included in Condition 8. If Horizon Center, LLC or any of its successors, transfers, or assigns fail to abide by the quit claim provisions of the deed then DOE and CROET may resolve the dispute subject to the dispute clause in the deed. Ultimately DOE has the right of judicial enforcement of the quit claim deed.

In response to your comment on Condition 10 in the Quitclaim deed, the text has been modified to indicate that "habitat for the endangered Indiana bat should be protected by retaining live or dead trees with exfoliating bark whenever possible." The protection of the natural area as required by Condition 8 will ensure that potential gray bat foraging habitat in the floodplain is not significantly impacted.

In consideration of all the safeguards in place to protect the natural area and any federally-listed species that might inhabit the area, DOE has determined that the proposed transfer of a portion of parcel ED-1 is not likely to adversely affect listed species. Please indicate your concurrence, if appropriate, on DOE's determination. If you have any further questions, please call me at (865)576-0938. Thank you in advance for your prompt reply.

Sincerely,



A handwritten signature in black ink, appearing to read "James L. Elmore". The signature is fluid and cursive, with a large initial "J" and "E".

James L. Elmore, Ph.D.  
Alternate NEPA Compliance Officer

cc:

David Allen, SE-30-1  
Susan Cange, AU-61  
Nancy Carnes, CC-10  
Katy Kates, AD-42



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

446 Neal Street  
Cookeville, TN 38501

September 18, 2002

Mr. James L. Elmore, Ph.D.  
U.S. Department of Energy  
Oak Ridge Operations Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

Dear Dr. Elmore:

Thank you for your letter and enclosure of August 2, 2002, transmitting a copy of the Quit Claim deed restrictions for the proposed transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET). A conference call regarding this proposal was held between representatives of the Department of Energy (DOE) and U.S. Fish and Wildlife Service on August 16, 2002. A subsequent correspondence on this subject was received on August 23, 2002. This letter reflects the decision of DOE to only transfer the developable portions of Parcel ED-1 to CROET. All of this information is supplemental to the original Biological Assessment (BA) prepared for this proposal in 1995, and the subsequent request for informal consultation, pursuant to Section 7 of the Endangered Species Act, on April 23, 2002. U.S. Fish and Wildlife Service (Service) personnel have reviewed the information submitted and offer the following comments for consideration.

The BA and supporting information are adequate and support the conclusion of not likely to adversely affect, with which we concur. In view of this, we believe that the requirements of Section 7 of the Endangered Species Act (Act) have been fulfilled and that no further consultation is needed at this time. However, obligations under Section 7 of the Act must be reconsidered if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered in this biological assessment, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

Our previous comments of June 6, 2002, regarding the Environmental Assessment (EA) Addendum, Mitigation Action Plan, the efficacy of previous CROET monitoring activities and DOE oversight on this parcel, and migratory bird issues remain valid. We would appreciate further consideration of the issues presented therein.

**OFFICIAL FILE COPY**  
FWS/ESQ

Log No. 77769  
Date Rec'd SEP 24 2002  
File Copy \_\_\_\_\_

These constitute the comments of the U.S. Department of the Interior in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander of my staff at 931/528-6481, ext. 210, or via e-mail at [steven\\_alexander@fws.gov](mailto:steven_alexander@fws.gov).

Sincerely,



for Lee A. Barclay, Ph.D.  
Field Supervisor

xc: John Owsley, TDEC, Oak Ridge  
Dave McKinney, TWRA, Nashville