

**FINAL RESTORATION PLAN & ENVIRONMENTAL ASSESSMENT
ADDENDUM**

**HI VIEW TERRACE SUPERFUND SITE
WEST SENECA, NEW YORK**

Prepared by

U.S. Department of the Interior, Fish and Wildlife Service

Issued June 3, 2011

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**Addendum to: Final Restoration Plan & Environmental Assessment
Hi View Terrace Superfund Site**

A. Introduction

In September 1995, the Department of the Interior (DOI), as a natural resource trustee, settled a natural resource damage claim with the Responsible Party (RP) for the Hi View Terrace Superfund Site (Site) located in the Town of West Seneca, Erie County, New York. We sought this settlement as compensation for the loss of natural resources from remediation at the Site. We are required to use the settlement to compensate for those losses. The Comprehensive Environmental Compensation and Liability Act (CERCLA), which designates natural resource trustees, requires that before the settlement monies can be used for such activities we must develop and adopt a Restoration Plan, and that in doing so, there must be adequate public notice and opportunity for hearing and consideration of all public comment. Accordingly, we prepared a Draft Restoration Plan (Draft Plan), issued on June 15, 1999, and sought comments on it. We also published a Notice of Availability of the Draft Plan in the *Federal Register* on June 11, 1999, and in the West Seneca Bee. A copy of the Draft Plan was also available for review at the office of the Town Clerk in West Seneca, New York. We received four requests for copies of the Draft Plan, and we received one comment letter during the 30-day comment period. In October 1999 we issued a Final Restoration Plan.

B. Background

The Final Restoration Plan describes contaminant impacts to the Site, and fish and wildlife resources affected at the Site. In summary, about 0.5 acre of wetland at the Site was lost due to fill placed at the Site, reducing the quantity and quality of wetlands available for wildlife. In developing our settlement requirements, we focused on that loss. As compensation we reached a settlement of \$25,000 with the RP. This settlement was formalized in an Administrative Cost Recovery Agreement signed by the U.S. Environmental Protection Agency and the RP in September 1995. The RP paid the \$25,000 to the U.S. Fish and Wildlife Service (Service) in April 1996. The restoration account for the Site, due to the accrual of interest, now contains about \$31,000, including funds for restoration planning and oversight.

C. Proposed Restoration

1. Goals of the Restoration Project

As noted in the Final Restoration Plan, the primary goal for the restoration project is to compensate for natural resources which were lost.

2. Specific Projects Considered in Final Restoration Plan & Preferred Alternative Identified in Final Restoration Plan

As discussed in the Final Restoration Plan, we assessed a "reasonable number" of possible restoration projects, as follows: No Action Alternative, Restoration of Natural Resources On-Site, Restoration of Natural Resources In the Vicinity of the Loss, and Replacement or

Acquisition of Similar Resources Nearby. For the final category, two projects were identified and considered: the Seneca Street Park and the Cazenovia Creek Nature Preserve.

Based on an evaluation of the potential impacts of the various alternatives in the Draft Plan, and a consideration of public comments received, we selected the project identified in the Draft Plan as the Preferred Alternative, the Cazenovia Creek Nature Preserve, for implementation in the Final Restoration Plan.

2. Revised Preferred Alternative

The Cazenovia Creek Nature Preserve property was not available for purchase with this damage settlement. However, the Town of West Seneca (Town) identified another site for acquisition, referred to as the Oxbow Property Western Arm. The Oxbow Property Western Arm is an approximately 14-acre property, of which about 10 acres are riparian wetland and 4 acres are associated adjacent upland. The Town has devoted substantial efforts to evaluating the value of this parcel, and has identified it as a priority for protection for wildlife. The wildlife habitat of the Oxbow Property Western Arm will be restored/enhanced by the Town in a manner consistent with that described in the "Oxbow Habitat Restoration Plan" (December 2010, prepared by Ecology & Environment, Inc.) and the "Buffalo River Watershed Owners' Manual: Town of West Seneca, N.Y." (September 2010, prepared by Buffalo Niagara Riverkeeper). As a result, acquisition of the Oxbow Property Western Arm will provide substantially similar benefits to fish and wildlife resources compared to the original site described in the Final Restoration Plan.

This project is technically feasible and cost effective. For the sum of \$29,000 the approximately 14-acre parcel will be acquired by the Town and will be protected in perpetuity for conservation. Implementation of the project will not result in any additional injuries to fish and wildlife resources, as it will ensure protection of those resources at the property, and compensate for injuries at the Hi View Terrace Site. This property is under a serious threat of development. There are no sizeable wetlands within the Town that can be restored, limiting restoration options. The proposed project will have no adverse impacts on human health or safety, and is consistent with relevant Federal and State policies. In implementing the project the Town will ensure compliance with applicable Federal and State laws. The property will be protected in perpetuity. This action does not entail the acquisition of land for Federal management as the property will be owned and managed by the Town. This project will restore natural resources, and make the environment and public "whole" from the loss of such resources due to remedial work at the Site.

Accordingly, we are amending this Restoration Plan to reflect the Oxbow Property Western Arm as the Preferred Alternative. Through a Cooperative Agreement between the Town and the Service, funds will be provided that will enable the Town to purchase that property. The property will be protected through a conservation deed restriction that

the Service will review and approve. An adjacent 14-acre parcel of this oxbow wetland was acquired by the Town in 2010 (through donation by the property owner) and protected for resident flora and fauna, and for low impact outdoor recreation and nature observation and study consistent with habitat protection. The Oxbow Property Western Arm will expand that property and the area protected to about 28 acres.

D. Compliance with the National Environmental Policy Act (NEPA)

The *Final Revised Procedures* for the U.S. Fish and Wildlife Service for implementing the National Environmental Policy Act (NEPA), published in the *Federal Register* on January 16, 1997, provide a categorical exclusion for natural resource damage assessment restoration plans prepared under CERCLA when only minor or negligible change in the use of the affected areas is planned. Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment.

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing NEPA and other statutes, orders, and policies that protect fish and wildlife resources, we determined that the action of the Final Restoration Plan for the Hi View Terrace, Town of West Seneca, Erie County, New York, was a categorical exclusion as provided by 516 Departmental Manual (DM) 6 Appendix 1 and 516 DM 6, Appendix 1, and no further documentation was therefore made.

The Oxbow Property Western Arm project will result in only a minor change in the use of the affected area. Accordingly, this Restoration Plan (Amended) remains a categorical exclusion under NEPA. The Environmental Action Statement documenting this determination for the Final Restoration Plan was attached to that Plan and is incorporated into this Plan by reference.

**U.S. Department of the Interior Approval
of the
Hi View Terrace Superfund Site
Final Restoration Plan & Environmental Assessment Addendum**

In accordance with U.S. Department of the Interior policy regarding documentation for natural resource damage assessment and restoration projects (521 DM 3), the Authorized Official for the Department must demonstrate approval of draft and final Restoration Plans and their associated National Environmental Policy Act documentation, with concurrence from the Department's Office of the Solicitor.

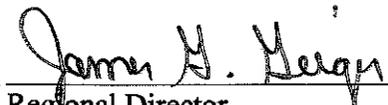
The Authorized Official for the Hi View Terrace case is the Regional Director for the U.S. Fish and Wildlife Service's Northeast Region.

By the signatures below, the Hi View Terrace Superfund Site Final Restoration Plan and Environmental Assessment Addendum is hereby approved.

Approved:

Concurred:

Acting



Regional Director
Date **JUN 17 2011**
Northeast Region
U.S. Fish and Wildlife Service



Mark Barash
Date
Senior Attorney
Northeast Region
Office of the Solicitor

UNITED STATES FISH & WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the action of the *Final Restoration Plan & Environmental Assessment Addendum - Hi View Terrace Superfund Site*:

XX is a categorical exclusion as provided by 516 DM 6 Appendix 1 and 516 DM 6, Appendix 1. No further documentation will therefore be made.

_____ is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.

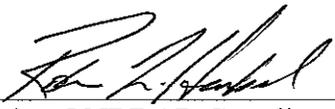
_____ is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policy, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents (list):

Final Restoration Plan & Environmental Assessment Addendum - Hi View Terrace Superfund Site



Region 5 NRDAR Coordinator

6/13/11

Date

Acting 

Regional Director/DOI Authorized Official

6/17/11

Date