United States Department of the Interior

FISH AND WILDLIFE SERVICE
300 Westgate Center Drive
Hadley, MA O1035-9589

In Reply Refer To:
FWS/Region 5/ES-EC

JUN 6 2011

Memorandum

To: Supervisor, New York Field Office

From: Acting Assistant Regional Director, Ecological Services

Subject: Final Restoration **Plan** and Environmental Assessment Addendum - **Hi** View Terrace Superfund Site - West Seneca, New York

This is to inform you that the Regional Director, as Authorized Official, has approved the *Final Restoration Plan & Environmental Assessment Addendum - Hi View Terrace Superfund Site.* The Regional Director has signed the Department of the Interior approval page and the Environmental Action Statement. Copies of the signed documents are attached.

We appreciate the efforts of you and your staff in accomplishing restoration under the Natural Resource Damage Assessment and Restoration program.

Attachments

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

Contact: Kathryu Jahn
U.S. Fish and Wildlife Service
3817 Luker Road
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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 I 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:

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

Concurred:

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 ofthis 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 — Date: 6/13/11

Acting Regional Director/DOI Authorized Official — Date: 6/17/11

FINAL RESTORATION PLAN

HI VIEW TERRACE SUPERFUND SITE
WEST SENECA, NEW YORK

Prepared by

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

Issued October 1999

Contact: Kathryn Jahn
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3817 Luker Road
Cortland, NY 13045
(607) 753-9334

Final Restoration Plan – 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 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. A summary of the comments and our response is found in Section G of this document. We are now issuing this Final Restoration Plan (Final Plan).

B. Background

The Hi View Terrace Superfund Site (Site) is an approximately 0.5 acre vacant lot located at 100 Hi View Terrace in West Seneca, New York. About 40 to 50 years ago fill was placed at the Site to bring the property up to grade for development. The fill was later found to be contaminated with cyanide. A removal action at the Site was undertaken in 1988 and 1989. During the removal operation the Site was enlarged to include a portion of 110 Hi View Terrace, and a small pocket of contaminated soil at 116 Hi View Terrace. A total of 5,600 tons of soil and debris were removed from the Site. The Site was subsequently backfilled with clean material.

C. Natural Resources and Impacts to those Resources

Prior to the placement of cyanide-contaminated fill at the Site, it contained a wetland swale. Cazenovia Creek, which borders the Site and flows to Lake Erie, is located at the foot of a steep cliff. Avian wildlife using the Site are likely limited to migratory songbirds. Waterfowl and wading birds may periodically be found resting and feeding in Cazenovia Creek next to the Site.

D. Natural Resource Damage Settlement

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 this 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 forwarded 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 $27,000, including funds for restoration planning.

On November 18, 1997, we issued a Request for Restoration Project Proposals for the settlement. We sent the proposal request to 21 parties, including the Natural Resources Conservation Service, Niagara County, the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP), Great Lakes United, the National Audubon Society, The Nature Conservancy, and one newspaper. One proposal was received in response to the request. That proposal was from Town of West Seneca (Town), requesting $20,000 for the Seneca Street Park. On September 22, 1998, we met with the Town to view the proposed project site. During that meeting we viewed and discussed a number of other potential sites within the Town and/or in the Cazenovia Creek watershed. None were found to be suitable for implementation with this settlement. Subsequently the Town, by letter dated February 23, 1999, submitted a proposal to us requesting $25,000 to purchase property along Cazenovia Creek for a nature preserve.

E. Proposed Restoration

1. Goals of the Restoration Project

The primary goal for the restoration project is to compensate for natural resources which were lost. Restoration includes returning an injured resource to its prior condition, as well as the acquisition of other resources to compensate for those which were lost. It is our policy to consider restoration projects in the following priority order:

1. Restoration of in-kind natural resources at the same location, if cleanup or remediation will be sufficient to prevent future contaminant problems for an on-site restoration;
2. Restoration or replacement of in-kind natural resources in the vicinity of the loss;
3. Replacement or acquisition of similar resources nearby.

In-kind means that the work focuses on resources comparable to those that were lost. Out-of-kind means that the work focuses on resources different than those that were lost. Projects entailing out-of-kind restoration are given less priority than those entailing in-kind restoration. Acquisition entails substituting an injured resource with another resource that provides the same or substantially similar services. The least priority is given to the acquisition of other resources. We will not select a project that requires acquisition of land for Federal management unless we determine that other restoration options are not possible.

2. Specific Projects Considered

We are required to assess a "reasonable number" of possible restoration projects. A project may consist of a single action or a set of actions which may be undertaken. In our initial review, we identified the following as desired characteristics for potential projects: the restored habitat is similar in type to the habitat impacted to provide similar services; the project is in the same watershed as the impacted wetland; and the project provides long-term or perpetual benefits to fish and wildlife resources. We identified the following specific potential projects:

a. No Action Alternative

Federal regulations require us as a natural resource trustee to consider this option. Under the No Action Alternative, no restoration, rehabilitation, replacement, or acquisition actions would occur. We would rely entirely on the natural recovery of the resources from the injuries sustained.

b. Restoration of In-Kind Natural Resources at the Same Location

The Site is located in an area of residential development surrounded by homes, except on the north, where it is bordered by Cazenovia Creek. Restoration of natural resources on-Site, whether in-kind or out-of-kind, is not feasible because of the extremely limited size of the area, and its development as residential properties. For these reasons, this option was not given further consideration.

c. Restoration or Replacement of In-Kind Natural Resources in the Vicinity of the Loss

No projects entailing restoration or replacement of in-kind natural resources in the vicinity of the loss were identified. The bedrock nature of the Cazenovia Creek bottom and the fact that the creek is subject to heavy spring flows severely limit shoreline and/or wetland restoration options along the creek. For these reasons, this option was not given further consideration.

d. Replacement or Acquisition of Similar Resources Nearby

Two such projects were identified. Those projects are the Seneca Street Park and the Cazenovia Creek Nature Preserve.

Seneca Street Park

The proposed Seneca Street Park would be located at 3739 Seneca Street on a 43-acre parcel of land on Cazenovia Creek. The Seneca Street Park is located about three miles downstream from the Site. According to information submitted by the Town, the Town is under contract to purchase the property using its own funds and a grant from the NYSOPRHP. The Town indicates they propose to, "establish an access area

and fishing site," at the Seneca Street Park, using, "DOI funds to construct a small, gravel covered parking lot and a rip-rap reinforced fishing area that will be open, at no cost to the public, 365 days a year."

Cazenovia Creek Nature Preserve

The Cazenovia Creek Nature Preserve project entails the purchase by the Town of a 17-acre parcel of land along Cazenovia Creek with protection of that property, in perpetuity, as a conservancy area. The property, located at 1030 Orchard Park Road, is an undeveloped area of open fields, woodlands, and wetland located in a floodplain along both sides of Cazenovia Creek. The property is about three miles downstream from the Site adjacent to the proposed Seneca Street Park. The project will establish a protected greenspace for wildlife. Public access will be permitted, but limited to ensure the wildlife values of the property are maintained. Pathways will be developed through the property to allow access for educational activities. The Town will collaborate with the West Seneca Central School District to develop educational programs to increase the environmental awareness of residents.

The total project cost of the Cazenovia Creek Nature Preserve Project is $50,000. This includes the purchase of the property ($25,000), the services of the Town engineer ($8,000), the value of services contributed by the Town's Committee for the Preservation of the Environment ($10,000), and the purchase of supplies ($7,000) for the construction of walkways and bridges on the property. The Town is seeking $25,000 from the Service needed to acquire the property.

3. Evaluation and Comparison of Projects

As a natural resource trustee, we are required to evaluate each of the possible restoration projects based on all relevant considerations, including the following factors: technical feasibility; the relationship of the expected costs of the proposed actions to the expected benefits; cost-effectiveness; the results of any actual or planned response actions; the potential for additional injury resulting from the proposed actions, including long-term and indirect impacts; the natural recovery period of the injured resources; the ability of the resources to recover with or without alternative actions; the potential effects of the action on human health and safety; consistency with relevant Federal, State, and tribal policies; and compliance with applicable Federal, State, and tribal laws. We must also give consideration to its ability to secure protection of the restoration site. The following is our evaluation of the specific projects described above:

a. No Action Alternative

Under the No Action Alternative, injuries to natural resources would be uncompensated. Because the wetlands at the Site have been filled for remedial construction, and are thus precluded from any sort of natural recovery, the No Action

Alternative would result in the continued loss of wetland habitat services. Further, no environmental benefits would be realized from the settlement with the RP for the Site and we would not fulfill our obligations as a natural resource trustee in accordance with the Administrative Cost Recovery Agreement and the provisions of CERCLA. For these reasons, this option was not given further consideration.

b. Seneca Street Park

Use of the settlement to construct a parking lot and fishing access area at the Seneca Street Park, as proposed by the Town, is not appropriate as it will not address the impacts from the Site. We are required to focus on lost services. The primary injury upon which our damage claim was based was the loss of about 0.5 acre of freshwater wetland from cyanide-contaminated fill placed in a wetland swale at the Site, resulting in a reduction in the quantity and quality of habitat available for birds and other wildlife. As the purpose of natural resource damage assessment and restoration is to restore lost services, it is important that the proposed action address such losses.

However, our review of the Town's proposal indicated that there were other facets of the Town's proposal for the Seneca Street Park that warranted further exploration. These included the following: shoreline stabilization, possibly incorporating shoreline wetland restoration to provide wetland habitat for wildlife; the possibility of restoring or enhancing existing wetlands at the property; and construction of an "environmental learning center," at the property. This type of work would be an appropriate use of the damage settlement.

We explored these options further during a September 22, 1998, meeting with the Town. That meeting and site visit revealed that shoreline and/or wetland restoration at the Seneca Street Park was neither feasible nor warranted. The plan for the Seneca Street Park specifies that most of the land will be occupied with soccer fields, extremely limiting restoration options. Cazenovia Creek at this point has a bottom that is shale bedrock. Along the Seneca Street Park, the creek shoreline is vegetated down to the shoreline. The creek is subject to heavy spring flows. These factors effectively preclude the feasibility and desirability of shoreline and/or wetland restoration at the property. For this reason, this project was not given further consideration.

c. Cazenovia Creek Nature Preserve

The Cazenovia Creek Nature Preserve will consist of 17 acres of open field, woodlands, and wetlands in a floodplain area along both sides of Cazenovia Creek. The Town will manage and protect the property as a nature preserve. The property will be protected with a perpetual conservation easement, deed restriction, or other legally binding mechanism. The Town will enforce that easement. Limited construction will be undertaken at the Nature Preserve in the form of pathways,

wooden walkways, and bridges to provide controlled access for educational purposes while minimizing disturbance of wildlife occupying the property. The Town will collaborate with the West Seneca Central School District to develop educational programs to increase the environmental awareness of residents. Students will make use of the Nature Preserve for scientific projects and studies and utilize the Nature Preserve for environmental education field trips. The basis for the Nature Preserve is the Town's awareness that selected existing greenspace must be preserved not only for public use but also to protect natural habitats and fragile wetlands that provide ecological balance for the Town. The property that will become the Nature Preserve, as well as the declining number of other undeveloped properties in the Town, is threatened by commercial and residential development.

The West Seneca Town Park and Recreation Master Plan calls for the establishment of Conservancy Areas in which protection and management of natural environments and wildlife habitats are the primary focus, with public recreational and educational uses as a secondary objective. Accordingly, the Town will manage and maintain the Nature Preserve in its natural state, protecting the property in that condition in perpetuity. Public access will be limited. The Town's Committee for the Protection of the Environment will supervise environmental education visits. The Town police will monitor the Nature Preserve to prevent vandalism, poaching, unapproved entry, and threats to the plants and animals there. The Town will regularly inventory plants and animals at the property and monitor public use of the property to ensure that adverse impacts are minimized. The Nature Preserve will complement the Seneca Street Park, located adjacent to the Nature Preserve, at which soccer fields, jogging/walking paths, and an environmental center will be constructed.

This project is technically feasible and cost effective. For the sum of $25,000 the 17-acre parcel will be protected in perpetuity as a conservancy area. Implementation of the Cazenovia Creek Nature Preserve 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 project 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.

3. Project Selected for Implementation

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

Preserve, for implementation. 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.

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

The *Final Revised Procedures* for the U.S. Fish and Wildlife Service for implementing 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.

The Cazenovia Creek Nature Preserve project will result in only a minor change in the use of the affected area. Accordingly, this Restoration Plan is a categorical exclusion under NEPA. We have prepared an Environmental Action Statement documenting this determination. That Environmental Action Statement is attached to this Restoration Plan as Attachment A.

G. Response to Comments Received

We received one comment letter during the 30-day comment period. That commentor expressed support for the project. The commentor recommended that the Service provide scientific and technical advice in further development of the project. We will do so as staffing and budget constraints allow. The commentor expressed concern regarding the availability of sufficient funding for the project in the future. It will be the Town's responsibility to ensure that such funding remains available. The commentor also recommended that the events and process that resulted in creation of the Preserve be interpreted at the Site. We support this recommendation and will attempt to implement it, providing staffing and budget constrains allow.