DOE/EA-1134

FINAL

Environmental Assessment for the Disposition of Prehistoric Remains Associated with the Public Water Supply Project

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U.S. Department of Energy
Fernald Area Office
Cincinnati, Ohio

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1.0 Purpose and Need

The U. S. Department of Energy (DOE) must determine the final disposition for prehistoric Native American remains recovered from an archaeological site discovered near the Fernald Environmental Management Project (FEMP) in Hamilton County, Ohio. The remains were removed as part of data recovery activities resulting from installation of an alternative water supply (Public Water Supply) for residents near the FEMP. The site (33Ha400) was discovered as part of an archaeological survey that was conducted by the DOE to comply with the requirements of the National Historic Preservation Act (16 U.S.C. § 470).

The Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. § 3001 *et seq.*) requires consultation with federally recognized Native American Tribes when burials are discovered. Other laws require consultation as well, such as the American Indian Religious Freedom Act (42 U.S.C. § 1996) and the National Historic Preservation Act. DOE has chosen the public review provisions of the National Environmental Policy Act (NEPA), (42 U.S.C. §§ 4321-4347) as the means to ensure full public participation in the decision-making process. To accomplish this, DOE has prepared this Environmental Assessment (EA) to evaluate disposition alternatives for the prehistoric remains. By making this EA available to the public for review, DOE has ensured that all Interested Parties have been provided an opportunity to comment on the final disposition of the prehistoric remains.

An additional need of DOE is to establish a process for disposition of prehistoric remains that may be discovered at the FEMP during future activities. If the proposed action is accepted as the means to disposition the prehistoric remains associated with the Public Water Supply project, then in the future DOE would handle other prehistoric remains in the same manner. In other words, the final disposition of the prehistoric remains discussed in this EA could serve as a model for the disposition of future remains discovered as a result of FEMP activities, both on and off-property. If additional remains would be uncovered in the future and the method of disposition was similar to the proposed action in the EA, then this EA (once approved) would serve as sufficient NEPA coverage for the disposition of those remains.

2.0 Background

DOE has partially funded the installation of an alternate water supply to residents around the FEMP affected by contaminated groundwater. Prior to the installation of the pipelines, archeological surveys were conducted to comply with Section 106 of the National Historic Preservation Act. These surveys resulted in the identification of prehistoric remains and associated funerary objects at site 33Ha400, as well as prehistoric bone fragments at site 33Ha607 and 33Ha608 (DOE, 1994a). None of these sites are within the FEMP property boundary.

All three sites were recommended as eligible for listing on the National Register of Historic Places (DOE, 1994b). Because of this, DOE entered into a Memorandum of Agreement with the Ohio Historic Preservation Office and the Advisory Council on Historic Preservation (DOE *et al.*, 1994). The Memorandum of Agreement stipulated the implementation of a data recovery plan to mitigate potential impacts to the three sites resulting from installation of the Public Water Supply (DOE, 1994c). As part of the Memorandum of Agreement, input was requested from potentially interested parties, including four federally recognized Native American Tribes and seven other Native American organizations, regarding the treatment and disposition of the remains after data recovery activities were completed. Initially, the Native American Alliance of Ohio (NAAO), which is not a federally recognized Tribe, responded to the request and provided input on treatment and disposition of the remains (NAAO, 1994). The notification of Native American organizations is of particular importance, since the discovery of Native American remains on DOE-controlled property activates the provisions of NAGPRA.

Official notification under NAGPRA was also submitted to the federally recognized Tribes (DOE, 1995a). Requests to be kept informed and involved in the decision making have been made by the federally recognized Miami Tribe and the Joint Shawnee Council, the latter comprised of three Shawnee Tribes; the Absentee, Eastern, and Loyal (Eastern Shawnee Tribe, 1995). In addition to the NAGPRA notification mentioned above, a meeting was held with federal Tribes in September, 1995 to receive input from them regarding disposition of the remains.

Data recovery resulted in the excavation of five prehistoric burials and one canine burial, along with several associated funerary objects (DOE, 1995b). Laboratory research was conducted on the remains, as agreed upon in the data recovery plan. The majority of research was completed within six months of excavation and the remains are currently awaiting final disposition. Preliminary findings indicate that the remains consisted of one adult and four juveniles aged 2 to 13 years old. Through radiocarbon dating, the burials were determined to be approximately 970 years old which would place them in either the Fort Ancient or Woodland Indian time periods. Since DOE could not identify any conclusive evidence that specific Tribes were in this part of Ohio at that time, it has been determined that the prehistoric remains are culturally unaffiliated with any federally recognized Tribe.

Pursuant to the data recovery plan, DOE is now required to determine a final disposition for the Native American burials and associated funerary objects. Based on the prior discussion, careful consideration must be given to the wishes and concerns of Native American Tribes and Groups, the Ohio Historic Preservation Office, the local community, and other stakeholders.

As stated in the previous version of this EA, which was made available for public review in November of 1995, the potential for significant delays in the disposition process due to the NAGPRA claiming process was a possibility. After issuance of the previous version of this EA for public review, the Miami Tribe

of Oklahoma filed a claim under Section 3(a)(2)(B) of NAGPRA for the subject human remains. The resultant delay in the issuance of this revised EA and the associated Finding of No Significant Impact (FONSI) were the result of DOE working with the Miami Tribe and other participating Tribes and Groups to try reach a settlement through the NAGPRA consultation process. Not until January of 1997 did all participating Tribes and Groups agree that the remains should be reburied on the FEMP property.

3.0 Proposed Action

The proposed action for the disposition of prehistoric remains associated with the Public Water Supply Project is for all remains and associated funerary objects to be reburied on-property at the FEMP. Approximately two acres would be set aside in the northern portion of the FEMP (Figure 1). The proposed area would be protected from collectors since it is on federal property. Also, this location will not be impacted by remedial activities and is compatible with all applicable federal, state, and local laws regarding the location of cemeteries.

The area being proposed has been surveyed for the presence of cultural resources. A specific reburial location has been identified in an area that will not disturb any other cultural resource during reburial. In addition, the area being proposed for reburial is in the process of being certified as clean under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) which is driving remediation of the FEMP. This certification ensures that the area will not have to be disturbed in the future for remedial activities.

Reburial activities would take place in accordance with the wishes of the Native American Tribes and Groups participating in this process. After reburial has been completed, DOE would retain ownership of the reburial property. DOE would continue to restrict access to the property as well, except for periodic visits by Native American Tribes and Groups, if so desired. If DOE was to ever consider sale or transfer of the property, input would be received from all interested parties and all necessary agreements to maintain the area as a burial ground would be negotiated and put in place.

4.0 Range of Alternatives

The options for the disposition of the prehistoric remains associated with the Public Water Supply Project are as follows: reburial at a Hamilton County Park in western Hamilton County, curation, reburial *in situ* along State Route 128, transfer to the Native American Alliance of Ohio, reburial at a local cemetery, and reburial in a regional Native American burial ground that would be established at the FEMP. The No Action alternative is also evaluated below. The only reasonable alternative from the above list is for the remains to be reburied at a Hamilton County Park. The reasons for this are outlined below.

Reburial at a Hamilton County Park

This alternative is similar to the proposed action, except that reburial would occur within the boundary of a Hamilton County Park. There are several parks in the area where the remains may be reburied, including Miami Whitewater Forest, Shawnee Lookout, and Mitchell Memorial Forest. Any of these parks provide some of the same benefits as reburial at the FEMP, such as controlled access and protection from development.

DOE has made contact with the Hamilton County Park District to determine the feasibility of reburial on park grounds. Park District officials have indicated that if reburial of the remains within a Hamilton County Park is considered the best alternative, Shawnee Lookout might be the most appropriate location (Hamilton County Park District, 1995).

Park officials have not agreed to reburial at this time and further negotiations would be necessary before a potential location for reburial could be determined. Any location chosen would need to meet all federal, state, and local requirements. All requirements regarding maintenance of the burial ground would have to be met as well. The Hamilton County Park District would own the burial ground in perpetuity. Access would be controlled to the burial ground, except for periodic visits by Native American Tribes and Groups, if so desired.

Curation

This alternative involves curating the prehistoric remains and associated artifacts for an indefinite amount of time. The remains could be studied as needed for scientific research purposes. This alternative is considered unreasonable since at this time the number of remains is too small to be of scientific value (DOE, 1995b). In addition, the six months of research that has been conducted to date provided researchers with all the information needed regarding the remains. Also, several Native American Tribes and Groups have already indicated that this alternative is not acceptable to them. This alternative is very similar to the No Action alternative, since the remains are presently stored at the FEMP by DOE.

Reburial *In Situ*

This alternative involves reburying the prehistoric remains at the location they were originally discovered, along State Route 128 in Hamilton County, Ohio. This alternative is considered unreasonable because of technical and scheduling difficulties resulting from the installation of the Public Water Supply pipeline. Now that the pipeline is installed, it would be impossible to rebury the remains *in situ* without damaging the integrity of the pipeline. Also, future maintenance activities on the pipeline may impact the reburied remains.

Transfer to the Native American Alliance of Ohio

This alternative involves the transfer of the prehistoric remains to the Native American Alliance of Ohio for reburial and/or cremation of the remains. This alternative is considered unreasonable, because federally recognized Native American Tribes may dispute the transfer of the remains to the Native American Alliance of Ohio (which is not federally recognized). Also, if the remains were reburied near the Alliance headquarters in Portsmouth, Ohio, they would be removed too far from their original location to satisfy the concerns of some Native American Tribes and Groups. Cremation of the remains would also eliminate the possibility of future research, if the need ever arises.

Reburial at a Local Cemetery

This alternative involves reburial of the prehistoric remains at a local cemetery in Crosby Township, Hamilton County, Ohio. There are several existing historic cemeteries located in the vicinity of the FEMP. This alternative is considered unreasonable for several reasons. Extensive cultural resource surveys would need to be completed, since many existing graves within local cemeteries are unmarked. Also, several interested parties have indicated that it is not desirable to intentionally mix separate cultures within the same burial ground.

Reburial within a Regional Native American Burial Ground at the FEMP

This alternative calls for the establishment of a regional Native American burial ground on FEMP property. The burial ground would encompass approximately 25 acres and would accept prehistoric Native American remains from the surrounding region. This alternative is considered unreasonable because DOE could not commit such a large tract of land for Native American reburials while remedial activities are ongoing at the FEMP. In the coming years, much of the FEMP will be undergoing environmental remediation and ecological restoration. Soil excavation and associated construction activities would prevent the commitment of a large area for reburial of Native Americans. In addition, resources to establish and maintain the cemetery would not be available under current conditions.

No Action

The No Action alternative would be to leave the remains in temporary storage for an indefinite amount of time with the DOE-Fernald Office. This is not considered a reasonable alternative because the interests of Native Americans would not be met. Since the prehistoric remains are not significant to scientific research (DOE, 1995b), NAGPRA mandates that the remains should be treated according to the wishes of those that have ownership. While research has concluded that the remains are culturally unaffiliated, several Native American Tribes and Groups have expressed an interest in them. One federally recognized organization has, in fact, claimed a cultural affiliation to the remains, based on the aboriginal occupation of the area by the organization's ancestors. If the prehistoric remains are not dispositioned in accordance with the wishes of this Native American organization, the organization may file a claim of ownership with the Indian Claims Commission or the United States Court of Claims pursuant to Section

3(a)(2)(C)(I) of NAGPRA. This lengthy process could be initiated by the Native American organization to ensure that the remains are treated properly.

By storing the prehistoric remains for an indefinite amount of time, DOE would not be responding to the requests of its stakeholders. Storage of the remains could also result in legal action against DOE. Therefore, the no action alternative is not a preferable alternative. It should be pointed out, though, that if a claim is filed, DOE may not have a choice with respect to temporary storage of the remains.

5.0 Affected Environment and Environmental Impacts

Proposed Action

The location of the proposed action consists of primarily a pine plantation as part of an approximately 90 acre woodland. No floodplains, wetlands, or threatened or endangered species or their habitat are present within the proposed location (DOE, 1994d). A cultural resource survey was conducted on the area being proposed for reburial and while some archaeological features were found in the area, the location for reburial will not impact any site on or eligible for the National Register of Historic Places (DOE, 1996).

Based on the location of the proposed action, environmental impacts would be minor. Reburial activities would lead to minimal impacts with respect to water quality and air quality. The area is located in a secluded area within the boundary of the Fernald Site and will not be visible to anyone off of the FEMP. Furthermore, the proposed area will not be disturbed by any remedial or other future activity at the Fernald Site.

Impacts to the prehistoric remains themselves (as a cultural resource) would also be minimal, since the wishes of Native American Tribes and Groups would be met. The area would be secure and protected from future development and prehistoric artifact collectors. Native American Tribes and Groups would be granted access to the area to perform ceremonies, if so desired.

There would be no impacts with respect to environmental justice concerns, other than the positive impact of meeting the wishes of Native American Tribes and Groups. As stated before, the population density surrounding the proposed reburial area is sparse. No minority populations or low-income communities are located near the proposed reburial area (DOE, 1995d).

Reburial at a Hamilton County Park

From the range of alternatives, reburial at a Hamilton County Park is considered the only reasonable alternative. As such, it is evaluated further with respect to the affected environment and environmental impacts. Officials of the Hamilton County Park district have not agreed to reburial in a Hamilton County Park at this time; however, there has been an expression of interest in learning more about requirements associated with reburial.

Miami Whitewater Forest and Shawnee Lookout are Hamilton County Parks that represent a diversity of natural and introduced habitats including deciduous forests, wetlands, restored tall grass prairie, introduced grasslands, and agricultural crops. Since both areas are a county park, they are protected from future land development. Several threatened and endangered species are found within the parks, including the federally endangered running buffalo clover (*Trifolium stoloniferum*). The potential for the discovery of cultural resources is also present throughout each park.

Environmental impacts would be dependent upon the exact location of reburial of the prehistoric remains. Since there is some flexibility in the location of burials at either Miami Whitewater Forest or Shawnee Lookout, it is expected that impacts to environmental resources would be minimized. For instance, prehistoric remains would not be reburied in an area that would impact running buffalo clover. Surveys would be conducted to determine the presence of cultural resources within the reburial area, and any potential impacts would be avoided.

There could be impacts associated with environmental justice from not meeting the concerns of Native American Tribes and Groups, who have indicated a preference for reburial of the remains at the FEMP. However, there would be no impacts from the actual reburial of the remains as it would not affect any minority populations or low-income communities.

6.0 References

Eastern Shawnee Tribe of Oklahoma, 1995, Letter, to Joseph Schomaker from Lamont Laird, "DOE-Fernald Site Human Remains," August 1, 1995.

Hamilton County Park District, 1995, Letter, Jon Brady to Ed Skintik, "Reburial of the Prehistoric Remains," September 20, 1995.

Native American Alliance of Ohio, 1994, Letter, to Ed Skintik from Oliver J. Collins, Re: Data Recovery Activities/Human Remains/Burial Artifacts, June 20, 1994.

U.S. Department of Energy, 1994a, "Phase I-III Cultural Resource Investigations of the Public Water Supply Project in Hamilton and Butler Counties, Ohio," Fernald Environmental Management Project, Cincinnati, Ohio, May 13, 1995.

U.S. Department of Energy, 1994b, Letter, to Don L. Klima, Chief, from Walter J. Quaider, "Department of Energy Public Water Supply Installation at the Fernald Environmental Management Project," DOE-2270-94, August 19, 1994.

U.S. Department of Energy, 1994c, "Plan for the Mitigation of Adverse Effects Data Recovery Investigations of Sites 33HA400, 33HA607, and 33HA608 Fernald Public Water Supply Project Hamilton County, Ohio," May 25, 1994.

U.S. Department of Energy, 1994d, "Fernald Environmental Management Project Natural Resource Management Plan," Fernald Environmental Management Project, Cincinnati, Ohio, July, 1994.

U.S. Department of Energy, 1995a, Letter, to distribution from David R. Kozlowski, "Native American Graves Protection and Repatriation Act Notification for Native American Skeletal Remains and Associated Report to interested Parties," DOE-1558-95, September 29, 1995.

U.S. Department of Energy, 1995b, "Review of Issues Associated with Final Disposition of Prehistoric Skeletal Remains from the Public Water Supply Project," Fernald Environmental Management Project, Cincinnati, Ohio, August 30, 1995.

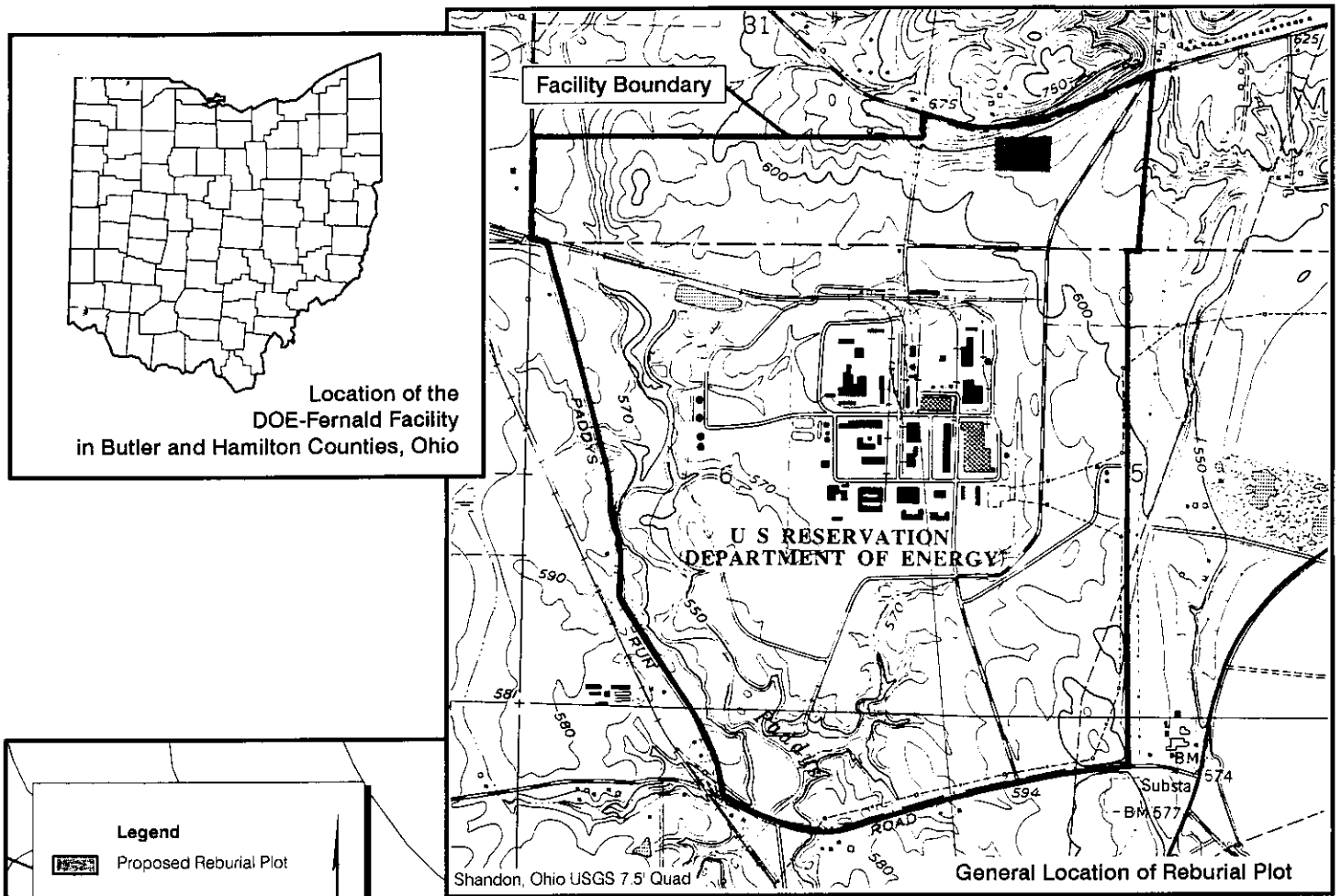
U.S. Department of Energy, 1995c, "Phase I Archeological Investigations of the Proposed CRU 2 Railroad Spur Monitoring Well Area at the Fernald Facility, Morgan Township, Butler County, Ohio," Fernald Environmental Management Project, Cincinnati, Ohio, January 11, 1995.

U.S. Department of Energy, 1995d, "Social and Economic Paper in support of Executive Order 12898," Fernald Environmental Management Project, Cincinnati, Ohio, January, 1995.

U.S. Department of Energy, Ohio Historic Preservation Office, Advisory Council on Historic Preservation, and FERMCO, 1994, Memorandum of Agreement Pursuant to Section 106 of the National Historic Preservation Act, September 14, 1994.

7.0 List of Agencies and Persons Consulted

Name and Title	Organization
Jon Brady, Director	Hamilton County Park District
George (Buck) Captain, Chief	Eastern Shawnee Tribe
Oliver Collins, Co-Chair	Native American Alliance of Ohio
Lisa Crawford, President	Fernald Residents for Environmental Safety and Health
Don Greenfeather, Business Chief	Loyal Shawnee Tribe
Cynthia Hernandez, Tribal Secretary	Absentee-Shawnee Executive Committee
Floyd Leonard, Chief	Miami Tribe
Ray Luce, Director	Ohio Historic Preservation Office



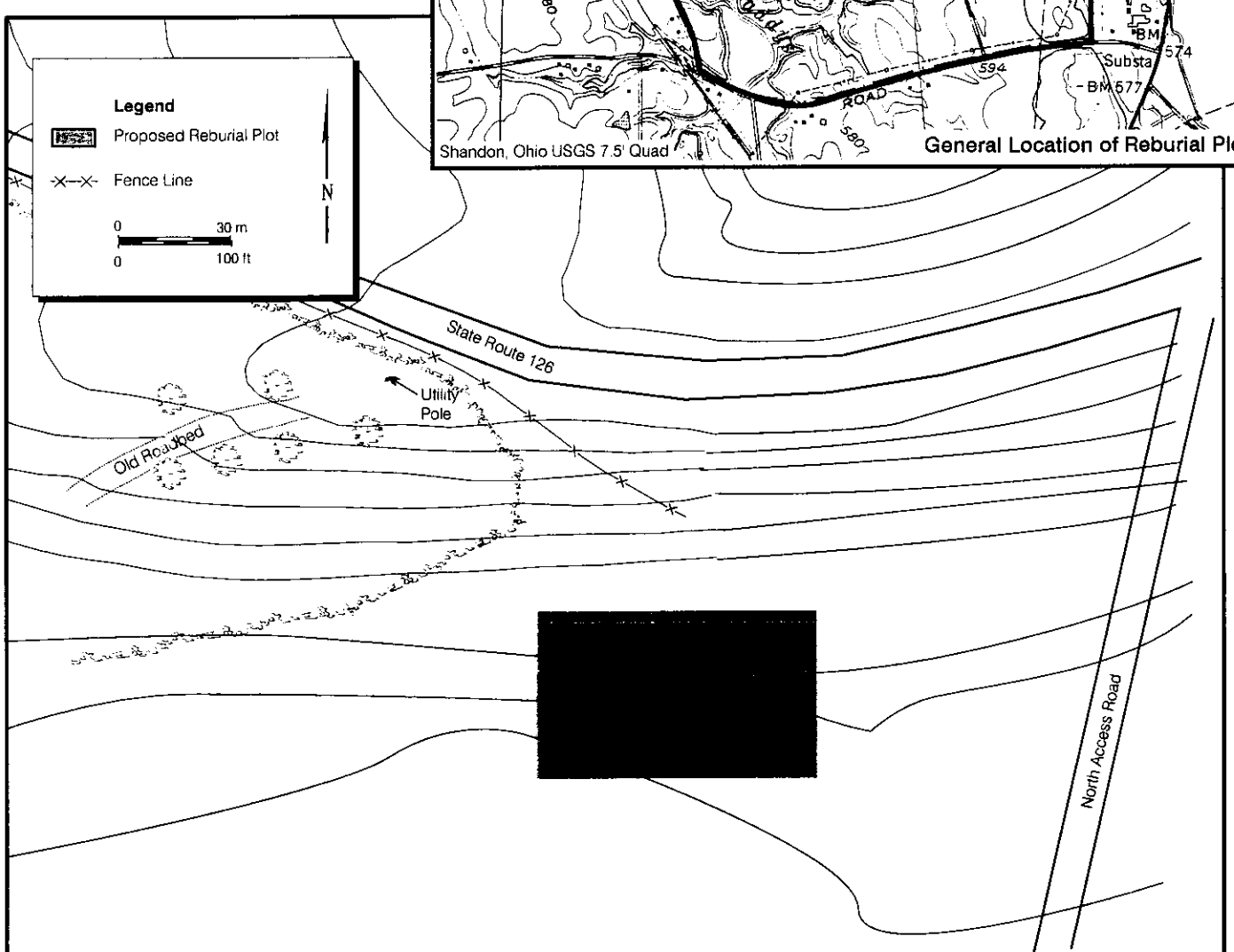


Figure 1. Potential Location for Reburial of Native American Remains

Finding of No Significant Impact
for the
Disposition of Prehistoric Remains
Associated with the Public Water Supply Project

1.0 Summary

The U.S. Department of Energy, Fernald Office (DOE-FEMP) has prepared an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) to evaluate the environmental impacts associated with the disposition of prehistoric Native American remains discovered during installation of the Public Water Supply project. The proposed action as described in the EA calls for the reburial of the remains within a two-acre plot on-property at the Fernald Environmental Management Project (FEMP). After careful evaluation of the proposed action, the range of alternatives, the environmental effects of all alternatives, and public input, DOE-FEMP has determined that the EA supports the finding that the proposed action will not have a significant effect on the human environment. As a result, no further NEPA documentation is required.

2.0 EA Availability

Copies of the EA for the Disposition of Prehistoric Remains Associated with the Public Water Supply Project are available at the Public Environmental Information Center, 10845 Hamilton-Cleves Highway, Harrison, Ohio 45030, (513) 738-0164.

3.0 Background

DOE has partially funded the installation of an alternate water supply to residents around the FEMP affected by contaminated groundwater. Prior to the installation of the pipelines, archeological surveys were conducted to comply with Section 106 of the National Historic Preservation Act (HPA). These surveys resulted in the identification of prehistoric remains and associated funerary objects at site 33Ha400, as well as prehistoric bone fragments at site 33Ha607 and 33Ha608. None of these sites are within the FEMP property boundary.

As agreed upon with the Ohio Historic Preservation Office, DOE-FEMP underwent data recovery to remove the remains and associated objects that would be impacted by installation of the pipeline. Since DOE-FEMP took possession of the remains, the notification and repatriation provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applied. The federally-recognized Shawnee and Miami Tribes were consulted, as well as the Native American Alliance of Ohio, which was involved as a consulting party under the NHPA.

Originally, all Native American Tribes and Groups consulted indicated a desire to have the remains reburied on-property at the FEMP. The Miami Tribe of Oklahoma filed a NAGPRA claim of ownership for the remains, based on their assertion as the aboriginal occupants of southwestern

Ohio. However, after negotiations with all Native American Tribes and Groups participating, agreement was reached in January of 1997 that the remains should be reburied on FEMP property. DOE has maintained the position that, based on data recovery results, the remains are culturally unaffiliated, and therefore not owned by any Native American Tribe. By reburying the remains on FEMP property, DOE is committed to meeting the wishes of the various Native American Tribes and Groups that have shown an interest in the remains.

4.0 Proposed Action

The proposed action for the disposition of prehistoric remains associated with the Public Water Supply Project is for all remains and associated funerary objects to be reburied on-property at the FEMP. Approximately two acres would be set aside in the northern portion of the FEMP. The proposed area would be protected from prehistoric artifact collectors since it is on federal property. Also, this location should not be impacted by remedial activities and is compatible with all applicable federal, state, and local laws regarding the location of cemeteries.

Reburial activities would take place in accordance with the wishes of Native American Tribes and Groups. After reburial has been completed, DOE would retain ownership of the reburial property. DOE would maintain the area and continue to restrict access to the property as well, except for periodic visits by Native American Tribes and Groups, if so desired. Although not anticipated, if DOE was to ever consider sale or transfer of the property to any person other than another federal agency/department, input would be received from all interested parties and any necessary agreements to maintain the area as a burial ground would be negotiated.

Only the remains and associated funerary objects recovered from the Public Water Supply project will be reburied at this time. Other remains that are discovered as a result of remedial activities at the FEMP may be reburied at this same location in the future, if all interested parties agree.

5.0 Environmental Effects

Based on the location of the proposed action, environmental impacts would be minor. No floodplains, wetlands, or threatened and endangered species or habitat is located within the reburial location. A cultural resource survey was conducted on the proposed location and no cultural resources were found. Reburial activities would lead to minimal impacts with respect to water quality and air quality. Surrounding land use is primarily agricultural, and the local population is sparse. Since the location of reburial would not be visible off-property, impacts to local land owners would be minimal. However, local land owners would be consulted prior to reburial activities as part of the EA public review process.

Impacts to the prehistoric remains themselves (as a cultural resource) would also be minimized to the fullest extent possible, since the wishes of Native American Tribes and Groups would be met. The area would be secure and protected from future development and prehistoric artifact collectors. Native American Tribes and Groups would be granted access to the area to perform ceremonies, if so desired.

6.0 Alternatives Considered

The EA considered reburial within a Hamilton County Park as the only other reasonable alternative to the proposed action. This alternative is similar to the proposed action, except that reburial would occur within the boundary of a Hamilton County Park. There are several parks in the area where the remains may be reburied, including Miami Whitewater Forest, Shawnee Lookout, and Mitchell Memorial Forest. Any of these parks provide some of the same benefits as reburial at the FEMP, such as controlled access and protection from development. DOE has made contact with the Hamilton County Park District to determine the feasibility of reburial on park grounds (Hamilton County Park District, 1995). Park officials have not agreed to reburial at this time and further consultation would be required before any agreement could be reached on reburial at a Hamilton County Park.

Other options for the disposition of the prehistoric remains associated with the Public Water Supply Project that were considered in the EA include the following: curation, reburial *in situ* along State Route 128, transfer to the Native American Alliance of Ohio, reburial at a local cemetery, and reburial in a regional Native American burial ground that would be established at the FEMP. The No Action alternative was also evaluated. All of these alternatives were considered unreasonable for various reasons, as detailed in the EA.

7.0 Determination

As stated earlier, environmental impacts associated with the proposed action are expected to be minor. Based on this, and on the fact that on-property reburial of the remains is generally in accordance with the wishes of Native American Tribes and Groups, DOE-FEMP has determined that the proposed action would have no significant impact on the human environment. Therefore, no further NEPA documentation is required.

Nat Brown

Nat Brown, Acting Manager
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April 28, 1997
Date