



Department of Energy
Washington, DC 20585

PROD 7563

October 26, 2017

Ms. Angela Boyer
U.S. Fish and Wildlife Service
4625 Morse Road, Suite 104
Columbus, Ohio 43230

Mr. Winton Ray
Cincinnati Zoo and Botanical Garden
3400 Vine Street
Cincinnati, Ohio 45220

Dear Ms. Boyer and Mr. Ray:

SUBJECT: Transmittal of the American Burying Beetle Memorandum of Agreement

This letter transmits the signed Memorandum of Agreement to facilitate recovery of American Burying Beetles (*Nicrophorus americanus*) at the Fernald Preserve. The Department of Energy Office of Legacy Management is excited to continue this partnership and looks forward to next year's release.

If you have any questions or require additional information, please call me at (513) 648-3333. Please send any correspondence to my attention at:

U.S. Department of Energy
Office of Legacy Management
10995 Hamilton-Cleves Hwy.
Harrison, OH 45030

Sincerely,

Susan Smiley
Fernald Preserve Site Manager
DOE-LM-20.2

Enclosure

cc w/enclosure:
Project Record File: FER 0705.30 (thru M. Korte)

cc w/o enclosure:
(electronic)
T. Smith Taylor, DOE-LM
G. Hooten, DOE-LM
T. Ribeiro, DOE-LM
B. Hertel, Navarro
J. Homer, Navarro



MEMORANDUM OF AGREEMENT
between the
U.S. FISH AND WILDLIFE SERVICE,
the
DEPARTMENT OF ENERGY—FERNALD PRESERVE,
and the
CINCINNATI ZOO & BOTANICAL GARDEN

I. PURPOSE

This Memorandum of Agreement between the U.S. Fish and Wildlife Service, Ohio Ecological Services Field Office, Columbus, Ohio, hereafter referred to as the "Service," the Department of Energy's Fernald Preserve, and the Cincinnati Zoo & Botanical Garden, hereafter referred to as the "Cooperators," is entered into to facilitate recovery of American burying beetles (*Nicrophorus americanus*) in Ohio.

II. AUTHORITY

This agreement is entered into under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and corresponding U.S. Fish and Wildlife Service Federal Fish and Wildlife Permit TE06841A-2 (attached).

III. SCOPE OF WORK

For the period as hereafter set forth, the Service and the Cooperators shall cooperate as necessary for the performance of the work as stated below:

A. The Service shall:

- (1) Provide Endangered Species Act section 10(a)(1)(A) exemptions for American burying beetles occurring on the Fernald Preserve property owned and/or managed by the Department of Energy. Exemptions will be provided through the Landowner Protections Appendix accompanying this Agreement.

B. The Department of Energy shall:

- (1) In coordination with the Service, manage a portion of the Fernald Preserve to support American burying beetles. The Department of Energy currently maintains 1050 acres of land as the Fernald Preserve, and agrees to maintain at least 700 acres of the Fernald Preserve property in a manner compatible with American burying beetle management.
- (2) Authorize releases of American burying beetles on the Fernald Preserve for a period of at least 5 years beginning in 2018. The goal of these releases is to

reintroduce the American burying beetle back into its historic range. This agreement continues with releases that have been occurring since 2013.

- (3) Notify the Service in advance of any larger-scale (> 5 acres) activities (e.g., extensive clear-cutting, widespread intensive agriculture, or other activities causing heavy soil compaction) within the beetle management areas which may adversely affect the quantity or quality of American burying beetle habitat or which may result in harm or injury to individual American burying beetles. Routine maintenance of restored areas (e.g., mowing, prescribed burning, spot herbicide application) would not be considered activities that could alter American burying beetle habitat.
- (4) Grant Service personnel and others authorized by the Service, including the Cincinnati Zoo & Botanical Garden, access to the property described in B(1) for the purposes of American burying beetle releases, monitoring and possible recapture, provided that Service and Cincinnati Zoo & Botanical Garden personnel obtain necessary training and briefings for authorized site access. Service and other authorized personnel shall notify the Department of Energy 24 hours prior to property access.

C. The Cincinnati Zoo & Botanical Garden shall:

- (1) Annually conduct prerelease and post-release monitoring of American burying beetles on the Cooperators property in accordance with the Service's most current "American Burying Beetle Rangelwide Survey Guidance."
- (2) Provide American burying beetles propagated in captivity for release at the Fernald Preserve for a period of at least 5 years, beginning in 2018. If necessary, work with the Service to seek out alternative sources of beetles for release at the Fernald Preserve.

IV. PERIOD OF PERFORMANCE

The period of performance of this agreement is from the effective date of signature by each party through December 31, 2022. See Special Provisions, Paragraph IX.A., for renewal provisions.

V. FINANCIAL ADMINISTRATION

There are no funding obligations on any party as a result of this agreement.

VI. PROJECT OFFICER

Angela Boyer
U.S. Fish and Wildlife Service
4625 Morse Road, Suite 104

Columbus, Ohio 43230

VII. MODIFICATIONS

Modifications, including the addition of new cooperating landowners, may be proposed at any time during the period of performance by any party. Modifications shall be in writing and signed by the Service Project Officer and any Cooperator affected by the modification.

VIII. TERMINATION


This agreement may be terminated by giving written notice of the termination to the other parties, not less than 30 days in advance of the effective date of termination.

IX. SPECIAL PROVISIONS

A. Renewal

This agreement may be renewed beyond the initial 5-year or other period, if agreeable to the Service and any Cooperator. Renewals shall be completed in writing, on or before December 31, 2022.

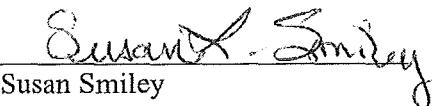
U.S. Fish and Wildlife Service:



Dan Everson
Field Supervisor
Ohio Field Office

9-15-2017
Date


Department of Energy:



Susan Smiley
Fernald Preserve Site Manager
Office of Legacy Management

10/24/17
Date

Cincinnati Zoo & Botanical Garden:



Winton Ray
Curator of Invertebrates, Aquatic Animals and Birds

10-1-2017
Date

Attachment

U.S. Fish and Wildlife Service

Federal Fish and Wildlife Permit
TE06841A-2



DEPARTMENT OF THE INTERIOR
 U.S. FISH & WILDLIFE SERVICE
 Endangered Species Permit Office
 5600 American Boulevard, West, Suite 990
 Bloomington, MN 55437-1458
 permitsR3ES@fws.gov

FEDERAL FISH AND WILDLIFE PERMIT

I. PERMITTEE

U.S. FISH AND WILDLIFE SERVICE
 dba OHIO FIELD OFFICE
 4625 MORSE ROAD
 SUITE 104
 COLUMBUS, OH 43230
 U.S.A.

2. AUTHORITY-STATUTES
 16 USC 1539(a)

REGULATIONS
 50 CFR 17.22

50 CFR 13

3. NUMBER
TE06841A-2 AMENDMENT

4. RENEWABLE	5. MAY COPY
<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> YES
<input type="checkbox"/> NO	<input type="checkbox"/> NO

6. EFFECTIVE 10/15/2015	7. EXPIRES 12/30/2020
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8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)
 DAN EVERSON
 FIELD SUPERVISOR

9. TYPE OF PERMIT
 NATIVE ENDANGERED SP. RECOVERY - E WILDLIFE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
 THROUGHOUT THE STATE OF OHIO AS CONDITIONED HEREIN

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE.
 - C.1. VALID FOR USE BY THE FIELD SUPERVISOR AND COLUMBUS, OHIO ECOLOGICAL SERVICES STAFF UNDER HIS DIRECT SUPERVISION. VOLUNTEERS OR AGENTS OF THE FWS MAY BE DESIGNATED TO WORK UNDER THE AUTHORITY OF THIS PERMIT. SUCH DESIGNATION SHALL BE MADE IN WRITING BY THE FIELD SUPERVISOR AND SHALL SPECIFY ACTIVITIES TO BE CONDUCTED ON BEHALF OF THE FWS. THE FIELD SUPERVISOR IS RESPONSIBLE FOR ACTIVITIES CONDUCTED UNDER THE AUTHORITY OF THIS PERMIT.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ITS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.
- E. Permittee is responsible for ensuring that the activities of all individuals are in compliance with the terms and conditions of this permit. Only individuals possessing a Cooperative Agreement (or similar instrument) are approved to conduct activities pursuant to this permit.
- F. Permittee is authorized to take American burying beetle (*Nicrophorus americanus*) incidental to habitat conservation and management actions aimed at recovery of the species, as conditioned herein, throughout Ohio. This permit does not, either directly or by implication, allow or grant right of trespass. Permittee is responsible for ensuring the activities of all individuals are in compliance with the terms and conditions of this permit.
- G. Types of activities authorized by this permit to promote recovery of the American burying beetle (ABB) through habitat conservation and management activities include, but are not limited to, upland habitat improvement and management including planting trees, shrubs, grasses, and forbs. Take (Landowner Protections) associated with returning habitat to

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ANNUAL REPORT DUE: 01/31

ISSUED BY <i>Misia Shull</i>	TITLE CHIEF - ENDANGERED SPECIES	DATE 09/29/2015
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baseline is exempted only when the following conditions are met:

- G.1. Landowner Protections (LP) will be included as part of the Project Plan when the Permittee determines there will be a net conservation benefit.
 - G.2. Permittee will, in determining whether a net conservation benefit is likely to occur, evaluate whether a net habitat gain is likely based on available information. If it is unlikely, appropriate measures to guard against this occurrence (e.g., supplement the baseline conditions to ensure a residual population will persist) will be taken or LP will not be granted.
 - G.3. Agreements with LP will include a description of the net conservation benefit anticipated.
 - G.4. Agreements with LP will include a description of nature, extent, timing, and implementation schedule of conservation actions needed to achieve a net conservation benefit.
 - G.5. Agreements with LP will include an appropriate documented baseline condition.
 - G.6. Permittee will monitor the implementation of the Landowner Agreements.
 - G.7. Permittee will follow-up one year prior to the end of the agreement period in an attempt to determine if the landowner intends to keep the land in conservation status compatible with the survival and recovery needs of ABB.
 - G.8. LP will be afforded only under the conditions specified within the Project Description of the accompanying biological opinion.
 - G.9. Permittee will inform landowners that their LP may be revoked if they breach their obligations.
 - G.10. Permittee shall monitor OH ABB populations and conduct surveys for ABBs consistent with USFWS-approved protocols available at: http://www.fws.gov/southwest/es/oklahoma/ABB_Add_Info.htm. Permittee may use non-lethal, baited pitfall traps, photographing individuals, collecting data and releasing unharmed at the capture site.
 - G.11. Take occurs prior to expiration date of this permit.
- H. No ABB hatched or found in the wild (previously reintroduced) will be translocated to new locations or otherwise removed from the wild without prior approval of the National ABB Recovery Coordinator (Condition M.3.).
- I. No ABB or biological samples from ABB shall be released from the custody of the Permittee to other parties without prior authorization from the National ABB Recovery Coordinator.
- J. All management prescriptions authorized by this permit may be reverted to baseline conditions any time after the Cooperative Agreement expires and before this permit expires. The following conditions, through the Agreement, shall be met to invoke LP:
- J.1. Permittee shall provide technical assistance to the landowner on management prescriptions to maintain the maximum conservation benefit, and minimize adverse impacts to ABB, prior to invoking LP.
 - J.2. Landowner shall be in compliance with the landowner agreement, including maintaining the baseline conditions.
 - J.3. Landowner, or agents of landowner, shall not shoot, capture, or otherwise directly or intentionally take ABB unless capturing and handling of beetles is associated with pre- and/or post-release monitoring by individuals authorized by a valid Federal Fish and Wildlife Permit.
 - J.4. Landowner shall ensure only lawful activities result in take.
 - J.5. Landowner shall notify the Permittee a minimum of 60 days prior to any habitat modification to allow the U.S. Fish and Wildlife Service, or authorized agents, to give technical assistance in minimizing adverse effects to ABB and to collect individual ABBs, at our discretion, prior to any habitat modification.
- K. Any accidental injury or mortality of ABB resulting from activities identified in the Agreement shall be reported to the U.S. Fish and Wildlife Service Permits Coordinator (Condition M.1.), within 48 hours. Accidental injuries or mortalities associated with Agreement activities may not exceed 10 beetles per year, per agreement. In the event this number is met, all activities must cease on lands covered under that agreement. Permittee shall contact the U.S. Fish and Wildlife Service Permits Coordinator (Condition M.1.), within 48 hours, explaining the circumstances in writing. Before reinitiating

activities, Permittee must receive written authorization from the Regional Permits Coordinator, U.S. Fish and Wildlife Service.

L. Annual reports of activities conducted under the authority of this permit are due January 31 following each year the permit is in effect. Failure to furnish any reports that are required by this permit is cause for permit revocation and/or denial of future permit applications. At a minimum, your reports shall include:

L.1. A description of the conservation practices/measures implemented;

L.2. Number of Agreements enrolled in the permit year and cumulatively;

L.3. Number of acres enrolled in the permit year and cumulatively;

L.4. List of all Agreements that have been terminated or expired in the permit year;

L.5. Records of all ABB sightings, including date, time, locations, brief description of the habitat including dominant vegetation and any obvious or potential threats, and if possible identify the sex and condition of the individuals observed;

L.6. A complete description of accidental injuries and/or mortalities to ABB, the dates they occurred, and any circumstances surrounding the incidents. In addition, steps should be identified to reduce the likelihood of such injuries and/or mortalities occurring in the future.

M. Reports shall be sent to the offices listed below. When possible, electronic copies shall be submitted in lieu of hard copies in MS Word, Portable Document Format, or other file format that is compatible with the receiving office.

M.1. Regional Permits Coordinator
U.S. Fish and Wildlife Service Region 3
Ecological Services
5600 American Blvd. W., Suite 990
Bloomington, Minnesota 55437-1458
(612/713-5343; fax 612/713-5292)
permitsR3ES@fws.gov

M.2. Regional Permits Coordinator
U.S. Fish and Wildlife Service Region 2
Ecological Services
500 Gold Ave SW 1306
Albuquerque New Mexico 87102
(505/248-6649; fax 505/248-6788)
permitsR2ES@fws.gov

M.3. Anita Barstow
ABB Recovery Coordinator
U.S. Fish and Wildlife Service
Ecological Services Field Office
9014 East 21st Street
Tulsa, Oklahoma 74129
(918/382-4518; fax 918/581-7467)
anita_barstow@fws.gov

M.4. Kate Haley Parsons
Terrestrial Endangered Species & Wildlife Diversity Program Administrator
Ohio Department of Wildlife
2045 Morse Road, Building G3
Columbus, OH 43229-6693
(614/265-6329; fax 614/262-1143)

cc: FWS/ Region 2 Attn: Regional Permits Coordinator
FWS/ TE Coordinators for Oklahoma
ODNR/ Terrestrial Endangered Species and Wildlife Diversity Program Administrator

END

LANDOWNER PROTECTIONS APPENDIX

This Appendix applies to the Memorandum of Agreement (Agreement) between the Department of Energy's Fernald Preserve (Cooperator) and the U.S. Fish and Wildlife Service (Service).

Landowner Protections are a means through which the Service recognizes the voluntary contribution of the Cooperator to improve and maintain habitat for a federally listed species. In this case the actions of Fernald will maintain and/or improve habitat for and allow for the release of American burying beetles on their property. To be provided with Landowner Protections the Cooperator agrees to abide by the terms outlined in this Appendix and the Agreement. Through Landowner Protections the Cooperator will not be held accountable through the Endangered Species Act for take of (harm to) the American burying beetle through an otherwise lawful activity.

The enrolled property of the Cooperator, as outlined in the Agreement, will be covered through Landowner Protections. Prior to the initiation of releases in 2013, the American burying beetle was not known to occur on this property, as outlined. As such, the baseline population value for the American burying beetle on the outlined property is zero.

With Landowner Protections the Cooperator can at any time following fulfillment of the terms of the Agreement alter or modify their enrolled property even if such action results in take of American burying beetle(s). Because the baseline population is zero there will be no restrictions associated with the Endangered Species Act as to how the enrolled property can be altered provided the actions taken are otherwise lawful.

Through the Agreement the Service and the Cooperator will carry out habitat project(s) as described in the Agreement. In managing projects to benefit wildlife and in activities on the enrolled property, the Cooperator will follow certain guidelines to benefit the American burying beetle.

For the life of the Agreement, the Cooperator agrees to:

- A. Help protect American burying beetle by not intentionally capturing, harassing, harming or killing these insects (excludes non-lethal capturing and handling associated with monitoring); and by asking others using the property to also protect beetles in the same way.
- B. Manage at least 700 acres of Fernald Preserve, in a manner compatible with American burying beetle management for the life of the Agreement.
- C. Notify the Service in advance of any larger-scale (> 5 acres) activities (extensive clear cutting, widespread intensive agriculture, or other activities causing heavy soil compaction) within the beetle management area(s) which may adversely affect the quantity or quality of American burying beetle habitat or which may result in harm or injury to individual American burying beetles. Routine maintenance of restored areas

(i.e. mowing, prescribed burning, spot herbicide application) would not be considered activities that could alter American burying beetle habitat. Also, notify the Service in advance of any planned sale, change of ownership, and/or termination of the Agreement on the described property. This allows the Service, or its partners, opportunity to attempt to catch and move American burying beetle prior to the cooperators modifying or selling the habitat associated with this project.

- D. Report to the Service's Fish and Wildlife biologist any observed accidental injury or death of American burying beetle within 2 days of the occurrence.
- E. Receive advance written approval from the Service prior to conducting any actions that are exceptions to these guidelines.

The Cooperator may contact the Service's Fish and Wildlife biologist, Angela Boyer, at 4625 Morse Road, Suite 104, Columbus, Ohio 43230, (614) 416-8993, ext. 22, or angela_boyer@fws.gov. In the event the Project Biologist cannot be reached please contact the Ecological Services Field Supervisor at (614) 416-8993, ext. 12.

The Service recognizes that the actions taken by the Cooperator are expected to achieve a net conservation benefit for American burying beetle by expanding occupied habitat within the range of the American burying beetle. These improvements, over the life of the project, are expected to improve habitat for breeding and foraging by the American burying beetle.

The American burying beetle is listed by the federal government as an endangered species, and therefore receives certain protections under the Endangered Species Act. In recognition of this contribution to the conservation of this federally listed species, the Service provides Landowner Protections to the Cooperator.