



## U.S. Department of Energy

Grand Junction Office  
2597 B<sup>3</sup>/<sub>4</sub> Road  
Grand Junction, CO 81503

JUN 05 2002

WM - 42

Ms. Kathy Walter  
Pennsylvania Department of General Services  
Bureau of Real Estate  
505 North Office Building  
Harrisburg, PA 17125

Subject: *Invitation to Bid #93387 for the Purchase of Canonsburg Area 3.109-Acre Parcel,*  
Issued February 19, 2002

Dear Ms. Walter:

Pursuant to our recent phone conversations, this letter presents the position of the United States Department of Energy (DOE) with regard to sale of the subject property, which is referred to in real property records and DOE project documentation as Area C.

The DOE entered into Cooperative Agreement Number DE-FC04-82AL19487 with the Commonwealth of Pennsylvania to remediate residual radioactive material at the Canonsburg processing site (the property), which was designated for remediation under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The property was acquired pursuant to the terms of the agreement, under which DOE provided 90 percent of the acquisition funds and the Commonwealth the remaining 10 percent.

UMTRCA and the Cooperative Agreement set forth provisions for post-remediation care and disposition of Area C, which was a portion of the property acquired by DOE and the Commonwealth. The DOE submits that the following provisions included in UMTRCA and the Cooperative Agreement between DOE and the Commonwealth must be addressed in the property disposition activity associated with the subject invitation to bid.

1. DOE and United States Nuclear Regulatory Commission (NRC) must concur in the sale of the property.
2. Prior to sale of the property, the DOE Contracting Officer shall determine the fair market value of the property. DOE will accept an approved appraisal for this purpose.
3. Appraisals must be procured and prepared in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions*.
4. Any appraisal shall be performed at no cost to DOE.
5. DOE requests that the appraisal be less than 6 months old when provided to the DOE Contracting Officer.
6. Prior to offering Area C for sale, the Commonwealth shall offer first right of refusal to the party that sold the property to DOE and the Commonwealth.

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With regard to Item 1 on the preceding list, DOE will obtain NRC concurrence to sell the property and will provide evidence of concurrence from both agencies to the Commonwealth, along with a notice to proceed with the sale.

The Cooperative Agreement requires the Commonwealth to pay DOE the lesser of 90 percent of the original acquisition cost or 90 percent of the sales proceeds.

As the Commonwealth has indicated in the subject invitation to bid, sale of Area C must be conditional upon establishing certain *enforceable* deed restrictions. The DOE has reviewed the deed restrictions in the invitation to bid and submits that the proposed restrictions do not address several key requirements that must be invoked to ensure ongoing protectiveness. Additional restrictions and provisions should be emplaced to:

1. Limit excavation depths on Area C. If a structure is to be built, the owner shall not excavate deeper than 4 feet below present surface grade so that at least 2 feet of clean material remains undisturbed on top of the thorium-230-contaminated soil. For excavation for any other purpose (e.g., utilities), excavation depths must be limited to less than 6 feet below present surface grade. These limits may be modified, depending on the location of excavation, if prior written approval is granted by DOE or the Pennsylvania Department of Environmental Protection;
2. Permit access to two monitor wells and one surface water sample location;
3. Require the owner to not allow erosion of the Chartiers Creek stream bank;
4. Require the owner to comply with applicable disposal requirements for any thorium-contaminated materials at the owner's expense should the owner inadvertently or deliberately expose these materials without prior written DOE or Pennsylvania Department of Environmental Protection approval;
5. Hold harmless the DOE and their successors and assigns from liability for any injury, damage, or loss resulting from placement of the monitor wells referred to in Item 2 of this list or from operations or activities prohibited or allowed under the recorded deed restrictions;
6. Identify the enforcement authority(ies) and mechanism(s) to ensure compliance with the deed restrictions; and
7. Ensure that the deed restrictions are binding on the purchaser and all subsequent owners of Area C.

Previously, ground water at Area C was contaminated and not suitable for domestic use. Monitoring results indicate that ground water has flushed clean of contaminants as represented by the DOE point of compliance well in Area C. The monitoring results indicate that the Area C well is in compliance with the EPA ground water standards. The DOE will obtain concurrence from the NRC verifying that the 40 CFR 192 standard has been met.

The DOE offers an edited version of the deed restrictions proposed in the invitation to bid and has enclosed them with this letter as Revised Exhibit "A." You will notice that the restrictions proposed by DOE make specific mention of two thorium anomalies left in place on Area C and that, previously, the ground water was contaminated. The DOE also has edited the disclosure

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statement from the invitation to bid and enclosed it with this letter, along with a resolution (see Proposed Deed Restrictions Resolution) that the Commonwealth may use to record the deed restrictions. Also enclosed is a specimen access agreement that DOE will enter into with the new owner of Area C.

Thank you for your cooperation in working with DOE to ensure that the buyer of Area C is fully informed of the contamination remaining on Area C and to ensure that protection of the public and the environment is maintained after Area C passes to private ownership. The DOE will work with your office and the Pennsylvania Department of Environmental Protection to facilitate sale of Area C while imposing only restrictions that are absolutely necessary.

Please call me at (970) 248-7620 to discuss how we should proceed. You may also communicate with me by facsimile at (970) 248-6023 or e-mail at [cooper.wayman@gjo.doe.gov](mailto:cooper.wayman@gjo.doe.gov).

Sincerely,



Cooper H. Wayman, REM 9921  
Senior Legal Counsel

Enclosures

cc w/enclosures:

J. Caverly, NRC  
D. Gillen, NRC  
J. Herman, Department of Environmental Protection  
C. Rittiger, Department of Environmental Protection  
E. Greybourne, DOE-GJO  
Project File LCAN 2.6 (A. Garcia)  
Legal File D4004.03I

cc w/o enclosures:

D. Bergman-Tabbert, DOE-GJO  
A. Kleinrath, DOE-GJO  
M. Widdop, MACTEC-ERS

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## Revised Disclosure Statement

(Originally included in *Invitation to Bid #93387 for the Purchase of Canonsburg Area 3.109-Acre Parcel*, issued February 19, 2002, by the Pennsylvania Department of General Services.)

Section 18.G. Seller discloses to Buyer that the site was, at one time, a dump for radium and uranium tailings and processing-related waste from a radium and, later, a uranium manufacturing operation of the plant across the street. The soil, which contained radium-226 and other radionuclides, was removed in 1985 to a depth of at least 6 feet and deposited in the clay-lined encapsulation cell located directly across Strabane Avenue. The land was then filled with clean soil. The fill was compacted and soil tested.

Two deposits of soil contaminated with low concentrations of thorium-230 were left in place on the property. Although the deposits are not regulated as long as they remain undisturbed, the thorium-230 deposits may eventually (in hundreds of years) result in concentrations of radioactive radon gas and its daughter products accumulating in occupied or habitable structures above allowable limits. Therefore, the Pennsylvania Department of Environmental Protection and the United States Department of Energy will permit only non-residential use. Structures may safely be occupied for commercial or industrial uses. Any occupied structures should be tested for radon daughter product concentrations, and said structures should be designed to minimize radon accumulation.

Although the deposits of thorium-230-contaminated soil occupy less than 2,000 square feet (less than 2 percent) of the 3.109-acre parcel, the following excavation restrictions will be imposed on the property:

1. To ensure that structures will remain safe from radon, Buyer and all subsequent purchasers shall ensure that at least 2 feet of undisturbed, clean material remains on top of the thorium-contaminated soil within a structure footprint. To accomplish this, excavation depths for construction of structures are limited to 4 feet below present surface grade on the entire parcel, unless owner first obtains written approval of the Pennsylvania Department of Environmental Protection or the United States Department of Energy.
2. To ensure that excavations for other purposes (e.g., utilities) do not encounter the thorium-contaminated soil, Buyer and all subsequent purchasers shall not excavate deeper than 6 feet below present surface grade anywhere on the parcel without prior written approval of the Pennsylvania Department of Environmental Protection or the United States Department of Energy.

There are two monitoring wells on the property that shall not be disturbed. Ground water in the shallow alluvial aquifer beneath the site was contaminated with uranium at levels above the United States Environmental Protection Agency ground water standard. Recent results indicate that the ground water now meets United States Environmental

Protection Agency water quality standards. Therefore, pending regulator concurrence that the ground water meets the standard, ground water use is not restricted on Area C. Ground water use will not be restricted in the deed recorded for the purchase of Area C. The United States Department Of Energy will notify the purchaser of regulator concurrence.

Buyer and all subsequent purchasers shall prevent erosion of the soils along Chartiers Creek.

These land use restrictions will be placed in the deed along with an easement allowing access to the wells and the surface water sampling location.

## Proposed Deed Restrictions Resolution

(Note: These restrictions are offered as the recorded instrument described in Section 9, Exhibit A, *Invitation to Bid #93387 for the Purchase of Canonsburg Area 3.109-Acre Parcel*, issued February 19, 2002, by the Pennsylvania Department of General Services.)

Deed Restrictions for a Parcel of Land referred to as Area C, Described as a Portion of the Property Addressed in the Notice of Filing of Declaration of Taking, Recorded in Book 2058, Pages 480 through 488 Inclusive, Records of the County of Washington, Commonwealth of Pennsylvania

(To be recorded in conjunction with the sale of said Area C, as described in the *Invitation to Bid #93387 for the Purchase of Canonsburg Area 3.109-Acre Parcel*, issued February 19, 2002, by the Pennsylvania Department of General Services.)

WHEREAS said Area C, County of Washington, Commonwealth of Pennsylvania, is owned currently by the Commonwealth of Pennsylvania, as recorded in Book 2058, Pages 480 through 488 inclusive, records of the County of Washington, Commonwealth of Pennsylvania (see Exhibit 1); and

WHEREAS said Area C was used historically for extracting materials from radioactive ores and other related processing activities; and

WHEREAS the United States Department of Energy, under the Uranium Mill Tailings Radiation Control Act of 1978, (42 USC 7901, *et seq.*), removed residual radioactive materials and other solid materials from Area C to standards established by the United States Environmental Protection Agency at Title 40 *Code of Federal Regulations*, Part 192 and approved by the United States Nuclear Regulatory Commission, and placed those materials in an engineered disposal cell located across Strabane Avenue from Area C; and

WHEREAS two occurrences of soil containing low concentrations of thorium-230 referred to as Grids 0809 and 0240 in remediation records maintained by the United States Department of Energy Grand Junction, Colorado, Office (Exhibit 2), the maximum reported concentration of thorium-230 being 58 picocuries per gram; the elevation of the top of the occurrences being approximately 942 and 944 feet above mean sea level, respectively, were left in place and covered by at least 6 feet of clean fill material (Exhibit 3); and

WHEREAS because of natural radioactive decay sufficient thorium-230 may decay to radium-226 and radon-222 within 1,000 years to pose a potential human health risk if exposure is unlimited; and

WHEREAS historical ore processing activities resulted in contamination of the ground water in the shallow, unconfined alluvial aquifer beneath Area C, ground water has flushed clean and now meets United States Environmental Protection Agency ground

water standards; said ground water is monitored by the United States Department of Energy to determine ground water chemistry, two ground water monitor wells are located on Area C, one surface monitoring location for sampling Chartiers Creek is located along the stream bank in Area C; the United States Department of Energy is constrained by United States Nuclear Regulatory Commission-approved plans and applicable laws and regulations to continue to collect samples from these locations; and the United States Department of Energy must properly decommission the monitor wells in accordance with Commonwealth of Pennsylvania regulations when the wells are no longer needed;

NOW THEREFORE, The owner of Area C shall observe the following restrictions on use of Area C as described below.

1. Excavations on Area C are limited to the following depths. (1) If a structure is to be built, the owner shall not excavate deeper than 4 feet below present surface grade so that at least 2 feet of clean material remains undisturbed on top of the thorium-230-contaminated soil. (2) For excavations for any other purpose (e.g., utilities), the owner shall not excavate deeper than 6 feet below present surface grade. These limits may be modified, depending on the location of excavation, if prior written approval is granted by the United States Department of Energy, the Pennsylvania Department of Environmental Protection, or their successors and assigns.
2. Ground water use is not restricted pending concurrence of the United States Nuclear Regulatory Commission.
3. The owner shall grant access to the United States Department of Energy for sampling, maintaining, decommissioning or other activity related to two wells and one surface water sampling location located within Area C.
4. Area C may not be developed or used for residential purposes.
5. For development of structures intended to be occupied for commercial, industrial, or any other purpose, the buyer is advised to consider incorporating radon-mitigation measures into the design of the structures. Occupied structures should be tested to confirm that indoor radon concentrations are within limits established to be protective of human health. The radon testing should be repeated periodically for the life of the structure. Any subsequent structures should also be tested for radon. Radon mitigation actions may be recommended if elevated radon concentrations are observed.
6. The owner shall maintain the integrity of the stream bank along Chartiers Creek.
7. These restrictions shall endure in perpetuity or until they are removed by a consensus decision of the United States Department of Energy and the Commonwealth of Pennsylvania Department of Environmental Protection; except

that Provision 4 above may be removed at the sole discretion of the United States Department of Energy.

8. These restrictions shall be binding on the purchaser and all subsequent owners of Area C.

Notarized signatures of authorized representatives of the United States Department of Energy and the Pennsylvania Department of Environmental Protection.

State of Pennsylvania )  
 )  
County of \_\_\_\_\_ ) ss.

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Pennsylvania Department of Environmental Protection Date

\_\_\_\_\_  
Date Notary Public  
My Commission Expires: \_\_\_\_\_

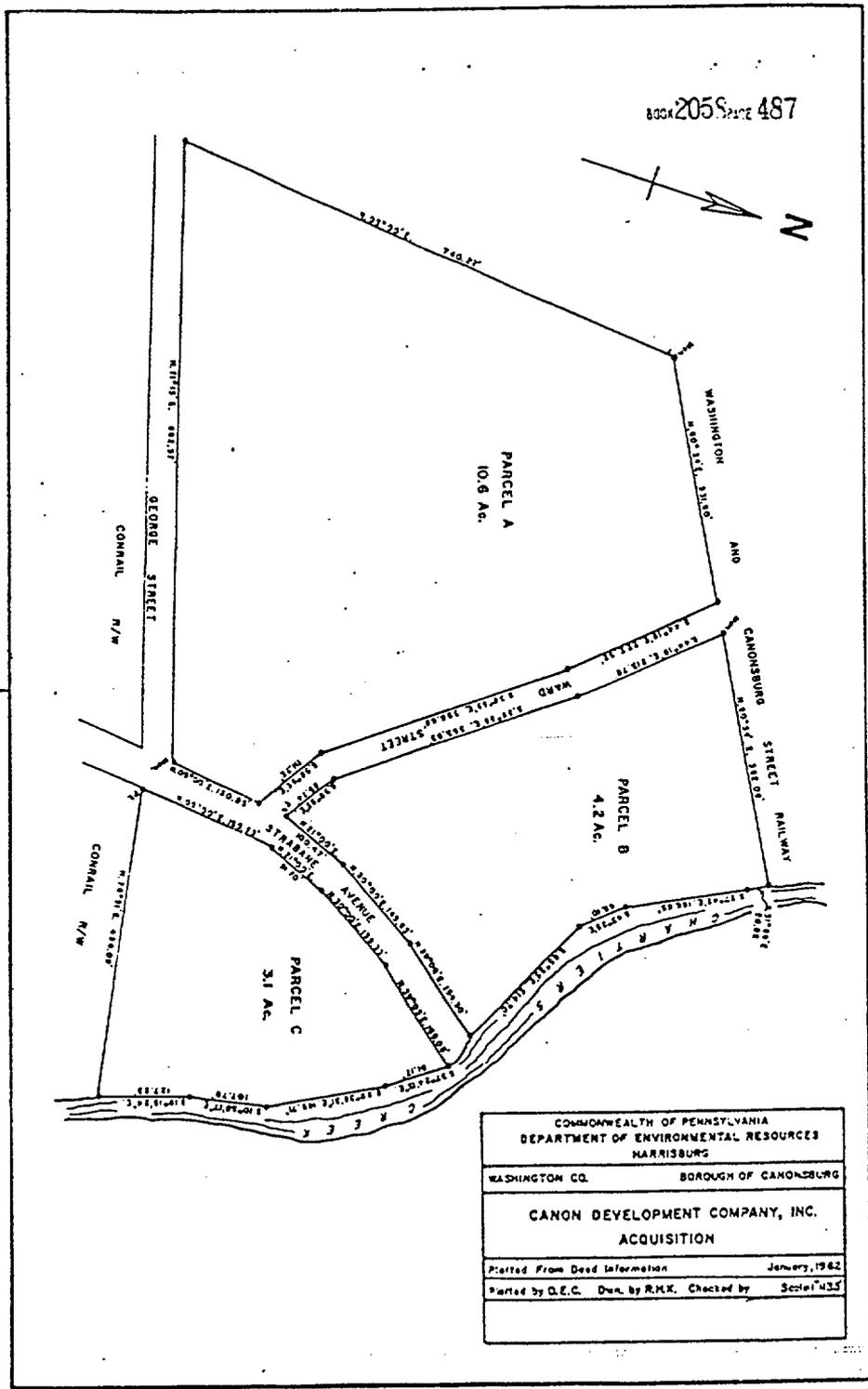
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State of Colorado )  
 )  
County of Mesa ) ss.

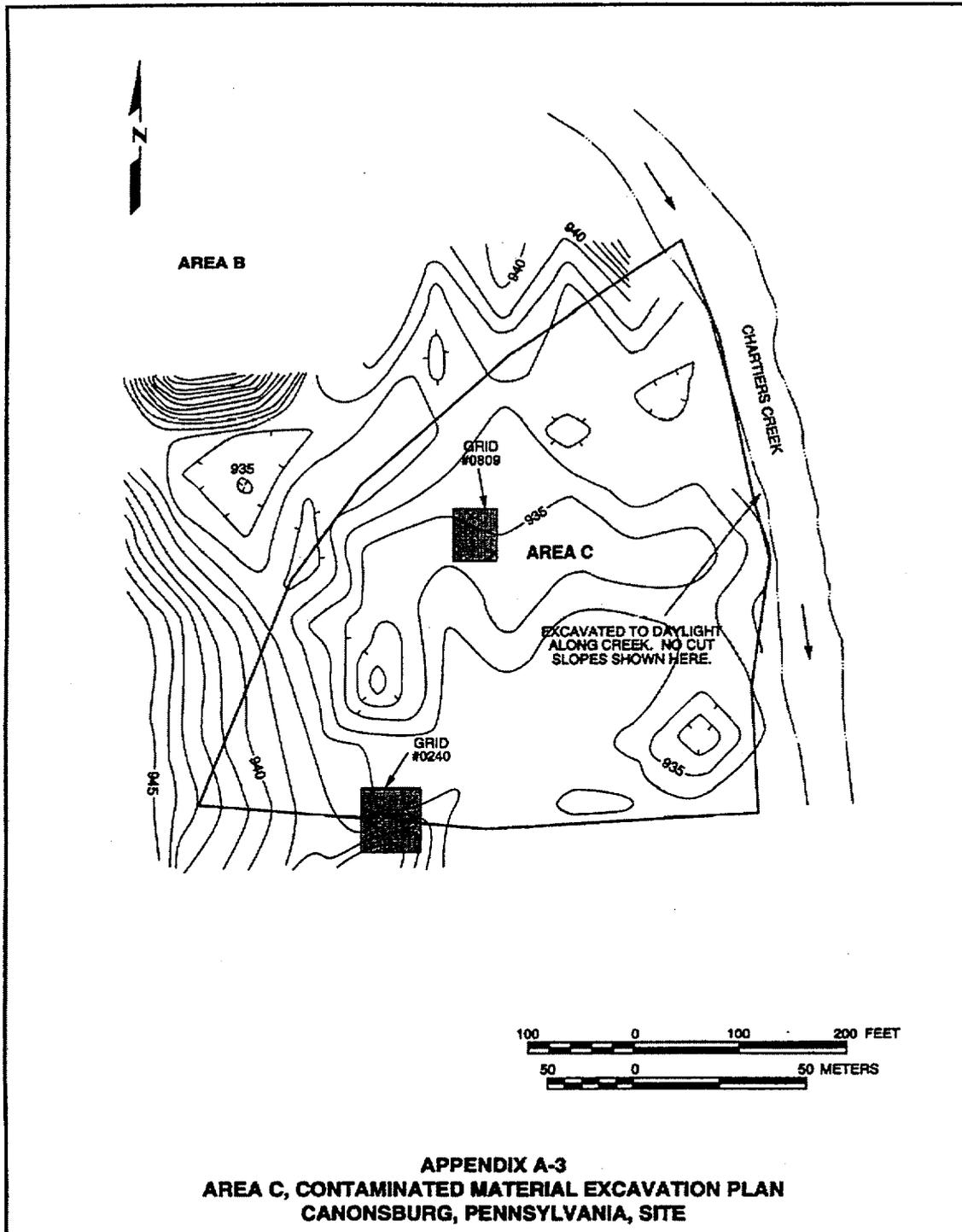
Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
United States Department of Energy Grand Junction Office Date

\_\_\_\_\_  
Date Notary Public  
My Commission Expires: \_\_\_\_\_



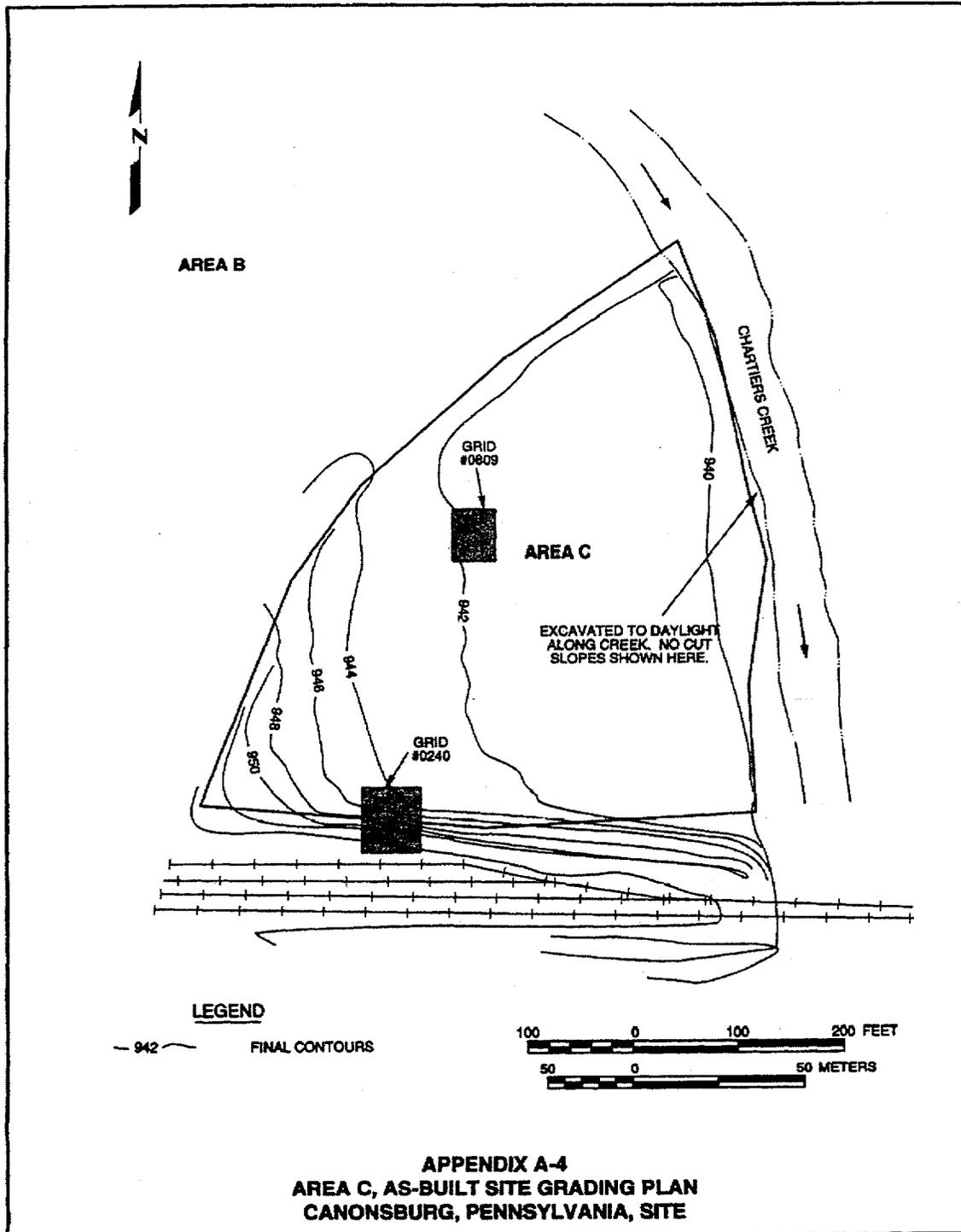
*Deed Restrictions for Area C*  
 Exhibit 1, Plat of Area C as recorded in Washington County, Pennsylvania, records



MAC: SITE/CAN6&MNEWBASE-CONTAM

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*Deed Restrictions for Area C*  
*Exhibit 2, showing the elevation of the top of the thorium-230-contaminated soil*  
*in Grids 0240 and 0809.*



MAC: SITE/CAN/S&M/NEWBASE-GRADING

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*Deed Restrictions for Area C,  
 Exhibit 3, showing the final surface elevations from which  
 excavation depth limitations are measured.*

Revised Exhibit "A," Section 9

(Originally included in *Invitation to Bid #93387 for the Purchase of Canonsburg Area 3.109-Acre Parcel*, issued February 19, 2002, by the Pennsylvania Department of General Services.)

- (9) Covenants, Conditions, and Restrictions. Buyer acknowledges the following deed restrictions that shall be placed on the parcel of land referred to as Area C, described as a portion of the property addressed in the Notice of Filing of Declaration of Taking, recorded in Book 2058, pages 480 through 488 inclusive, Records of the County of Washington, Commonwealth of Pennsylvania.
- A. The two monitoring wells on the parcel shall not be disturbed, and access by foot or vehicle for purposes of monitoring, surveillance, maintenance, or decommissioning activities shall be granted to the Pennsylvania Department of Environmental Protection, the United States Department of Energy, or their successors and assigns, or their duly authorized representatives, in and around any and all buildings, structures, and improvements erected on the parcel. Buyer shall also grant to the Pennsylvania Department of Environmental Protection, the United States Department of Energy, or their successors and assigns, or their duly authorized representatives, access by foot to a surface water sampling location on the Chartiers Creek stream bank.
  - B. As of the date of publication of this disclosure, ground water beneath Area C meets United States Environmental Protection Agency ground water standards and is suitable for use for any purpose. The United States Department of Energy will obtain concurrence from the United States Nuclear Regulatory Commission that the ground water is in compliance with the EPA standard at 40 CFR 192.
  - C. As a result of possible radon accumulation within occupied or habitable structures, the Pennsylvania Department of Environmental Protection and the United States Department of Energy will permit only non-residential use of this parcel.
  - D. The Pennsylvania Department of Environmental Protection or the United States Department of Energy may monitor the parcel for the purpose of measuring and assessing the presence and concentrations of radioactive materials, including but not limited to radon and its daughter products in occupied structures.
  - E. As a result of two low-concentration deposits of thorium-230 left in place more than 6 feet beneath the current land surface, the buyer shall observe the following limitations on excavation depths. (1) If a structure is to be built, the owner shall not excavate deeper than 4 feet below present surface grade so that at least two feet of clean material remains undisturbed on top of the thorium-230-contaminated soil. (2) For excavations for any other purpose (e.g., utilities), the owner shall not excavate deeper than 6 feet below present surface grade. These limits may be modified, depending on the location of excavation, if prior written approval is granted by the United States Department Of Energy, the Pennsylvania Department of Environmental Protection, or their successors and assigns.

- F. The buyer shall maintain the stream bank improvements along Chartiers Creek to prevent erosion of the soils along said creek.
- G. If the owner of this parcel allows or causes thorium-contaminated materials from depths greater than 6 feet beneath the current land surface to be exposed or dispersed, the owner shall be responsible for all costs relating to consolidation and permitted disposal of the contaminated materials.
- H. The buyer shall hold harmless the Commonwealth of Pennsylvania and the United States of America, or their successors and assigns, from liability for any injury, damage, or loss resulting from placement of the monitor wells referred to in Condition A above or from operations or activities stipulated or allowed under these Covenants, Conditions, and Restrictions.
- I. These restrictions shall be binding on the purchaser and all subsequent owners of this parcel.

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF  
WELLS AND WELL EQUIPMENT

THIS AGREEMENT, entered into by and between Landowner Name,  
hereinafter called LICENSOR, and THE UNITED STATES OF AMERICA, by and through the  
Department of Energy, hereinafter called the LICENSEE,

WITNESSETH:

LICENSOR, in consideration of xxxx dollars and no cents  
(x wells X 5 years X \$75.00) = (\$750.00), and in consideration of the faithful performance by LICENSEE  
of all activities and conditions herein contained, hereby grants, consents and agrees to the installation,  
maintenance and use, and rights of ingress and egress to and from monitor well(s) and appurtenances. The  
interest granted herein shall be a right of use of the property for the purposes described herein.

The monitoring well(s) subject to this agreement are as follows: Well names

The monitoring well(s) are located as shown on Exhibit A (map) which is attached and made a part hereof.

The monitoring well(s) and appurtenances and all equipment and tools for maintenance and use thereof  
placed in or upon the described property shall remain the property of the LICENSEE and may be removed  
by the LICENSEE at its own cost and expense at any time during the life of this agreement. The well(s)  
and appurtenances thereof shall be maintained by the LICENSEE in a good, safe, and workmanlike  
manner.

Upon removal or relocation of the monitoring well(s) and appurtenances, the LICENSEE shall restore the  
described property to as nearly as possible the same state and condition existing prior to the installation of  
the monitoring well(s) and appurtenances.

The LICENSEE agrees to cooperate to the extent allowed by law, in the submittal of all claims pursuant to  
the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.) for alleged loss, injuries, or damages, to persons or  
property arising from the acts of LICENSEE'S employees, acting within the scope of their employment, in  
the installation, use, maintenance, removal or relocation of the monitoring wells and appurtenances.

The LICENSEE shall cause its contractors and subcontractors who enter the property under this agreement  
to carry reasonable liability insurance covering risk of liability caused by any of their activities. Upon  
request, the LICENSEE'S contractors and subcontractors will provide the LICENSOR certificates  
evidencing insurance coverage.

LICENSEE shall be responsible for any loss or destruction of, or damage to, the LICENSOR's real and personal property caused by the activities of the LICENSEE in exercising any rights hereby granted in this agreement; PROVIDED, that such responsibility shall be limited to restoration of such real and personal property to a condition reasonably compared to its condition on the effective date of this agreement by techniques of backfilling, seeding, sodding, landscaping, repair or replacement, and such other methods as may be agreed to between the parties.

**SPECIAL CONDITIONS:**

This agreement shall become effective on the date executed by the LICENSEE and shall continue in full force and effect for 5 year(s), unless earlier terminated by the LICENSEE upon 30 days written notice to the LICENSOR. Should the LICENSEE terminate this agreement or abandon the monitoring well(s) in question, the LICENSEE's right of use shall revert to the LICENSOR.

LICENSOR and its lessee will be notified 48 hours prior to entering property under this agreement. Sampling and monitoring activities, beyond well installation and abandonment of wells previously identified in the agreement, will be conducted during normal business hours, unless LICENSOR provides consent.

This agreement shall inure to the benefit of and be binding upon the successors, assigns, and transferees of the parties hereto.

LICENSEE:  
**UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY**

By: \_\_\_\_\_ Date: \_\_\_\_\_

LICENSOR:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Address: Mr. Landowner  
Your address  
Your City, State & Zip

Phone: (000) Your phone number