

October 13, 2011

Mr. Reid Nelson
Director, Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue
Suite 803
Old Post Office Building
Washington, DC 20004

SUBJECT: NOTIFICATION OF FINDING OF ADVERSE EFFECT ON A HISTORIC PROPERTY AND ASSOCIATED MEMORANDUM OF AGREEMENT FOR THE PROPOSED CONSTRUCTION OF FERMI NUCLEAR POWER PLANT, UNIT 3, BASED ON THE COMBINED LICENSE APPLICATION REVIEW

Dear Mr. Nelson:

With this letter, in accordance with 36 CFR Part 800.6(a)(1), the U.S. Nuclear Regulatory Commission (NRC) is notifying the Advisory Council on Historic Preservation (ACHP) of a potential finding of adverse effects on historic properties as a result of the proposed construction of a new nuclear power plant (Fermi Unit 3, or Fermi 3) at the Detroit Edison Fermi site in Frenchtown Township, Monroe County, Michigan. Specifically, the proposed construction of Fermi 3 would require the demolition of the non-operating Enrico Fermi Atomic Power Plant, Unit 1 (Fermi 1). Fermi 1, according to a letter (Enclosure 1) dated May 9, 2011 from the Michigan State Historic Preservation Officer (MI SHPO), "...appears to meet the criteria for listing in the National Register of Historic Places (NRHP) as one of the first power reactors of its type that operated safely and proved the feasibility of the fast breeder reactor design on a commercial scale." Although most of the internal components of the plant were removed during initial decommissioning in 1975 and subsequent remediation activities, the facility's external structure retains sufficient physical integrity, supported by extensive evidence, to adequately convey the significance of the plant. As such, the NRC is treating Fermi 1 as a historic property that is NRHP-eligible.

For your reference, this letter includes background on the NRC's activities pursuant to Section 106 of the National Historic Preservation Act (NHPA) to date, as well as information contained in the planned draft Environmental Impact Statement (DEIS) for the combined license (COL) for Fermi 3, which is scheduled for publication in the Fall of 2011. NRC staff requests your comments and recommendations within 30 days of receipt of this letter and associated materials.

BACKGROUND:

In September 2008, Detroit Edison Company (DTE) submitted its application for a COL, and in November 2008, DTE's application was accepted by the NRC for detailed review. At that time (November 2008), the NRC became the lead federal agency, in accordance with 36 CFR Part 800.1(a), and the U.S. Army Corps of Engineers became a cooperating agency.

By letter dated December 24, 2008,¹ NRC staff initiated consultation under Section 106 of the NHPA with the MI SHPO concerning the proposed Fermi 3 COL project. In this letter, the NRC provided notice that it was using the NEPA process for the preparation of the EIS to comply with the obligations imposed under Section 106 of the NHPA, in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. However, in a subsequent letter dated December 16, 2010², the NRC also sent the MI SHPO, per his request, an *Application for Section 106 Review* form (Enclosure 2) to facilitate his review of the subject Fermi 3 application. In this latter letter, and as depicted in Enclosure 3, the NRC identified the area of potential effects (APE) for the proposed undertaking as an area that includes a direct APE, within which ground disturbance may occur as part of the building of the proposed Fermi 3, and an indirect APE, within which visual impacts may occur as part of the building and operation of the proposed Fermi 3. In the *Application for Section 106 Review*, the NRC made a determination "...that the [potential] demolition of the external structure of Fermi 1 would adversely affect the intrinsic attributes that contribute to its cultural significance and recommendation as eligible for the NRHP as a significant historic property." The MI SHPO concurred with this determination of adverse effect in the aforementioned May 9, 2011, letter.

Phase I cultural resources investigations were conducted within the direct and indirect APEs for the proposed Fermi 3 project to identify cultural resources and historic properties, including those resources and properties that are archaeological and architectural (or aboveground resources). The reports documenting the results of the Phase I cultural resources investigations are listed below:

- Detroit Edison technical report – Fermi 3 Phase I cultural resources investigation, July 2008 (Demeter et al. 2008).
- Detroit Edison technical report – Fermi 3 submerged sites sensitivity study, December 2008 (Weir 2008a).
- Detroit Edison technical report – Fermi 1 preliminary *National Register of Historic Places* evaluation, March 2009 (Kuranda et al. 2009).
- Detroit Edison technical report – Fermi 3 archaeological survey, November 2009 (Taylor 2009).
- Detroit Edison technical report – Fermi 3 cultural resources review, March 2011 (Taylor 2011).

The NRC determined that the Phase I cultural resources investigations detailed in the five reports meet the Secretary of Interior's Standards and Guidelines for Archaeology and Historic

¹ NRC. 2008. Letter to B. D. Conway, State Historic Preservation Officer from R. Whited, Branch Chief, Office of New Reactors. Subject: Notification and Request for Consultation and Participation in the Scoping Process for the Fermi Nuclear Power Plant, Unit 3 Combined License Application Review (Docket No. 52-033). December 24, 2008. ADAMS No. ML083151405.

² U.S. NRC 2010. Regarding *Section 106 Process for the Fermi Nuclear Power Plant, Unit 3 Combined License Application Review*. Letter dated December 16, 2010, from R. Whited, Branch Chief, Office of New Reactors, to Brian Conway, Michigan State Historic Preservation Officer. Includes the MI SHPO's *Application for Section 106 Review* form and a Submerged Sites Sensitivity Study as a supplemental response to RAI Question CR4.1.3-8. ADAMS No. ML101820297

Preservation (48 FR 44716).³ The NRC staff used the Phase I cultural resources investigations reports, as well as information contained in Detroit Edison's license application, as the basis of NRC's environmental review required by NRC regulations in 10 CFR Part 51, which implements Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended. The review identified potential adverse impacts to historic and cultural resources that would result from the undertaking.

As noted above, the NRC is using the process required by NEPA for the preparation of the EIS to comply with the obligations imposed under Section 106 of the NHPA, in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. Therefore, the NRC's environmental review also identified the Section 106 effects of the proposed Fermi 3 project on historic properties.

The NRC staff also contacted 17 federally recognized Indian tribes⁴ to request information regarding historic, cultural, and archaeological resources potentially affected by the proposed Fermi 3 project⁵. To date, none of the tribes have responded. The NRC has also consulted with the MI SHPO. Correspondence related to the Fermi 3 project Section 106 consultation can be found in Enclosure 4.

The NRC staff will have documented its preliminary findings in the planned Fermi 3 DEIS. The Phase I cultural resources investigations conducted for the Fermi 3 project identified a total of 22 NRHP-eligible historic properties within the direct and indirect APEs for the proposed Fermi 3 project. One historic property, Fermi 1, is located within the direct APE and 21 historic properties (all architectural or aboveground resources) are located within the indirect APE. Descriptions of these 22 historic properties are provided in the table below.

³ 48 FR 44716, National Park Service. "The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation." *Federal Register*. Volume 48, pp. 44716. Washington, D.C. September 29, 1983.

⁴ The 17 tribes are: Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Hannahville Indian Community, Huron Potawatomi, Inc., Keweenaw Bay Indian Community, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Little Traverse Bay Bands of Odawa Indians, Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, Little River Band of Ottawa Indians, Pokagon Band of Potawatomi Indians, Saginaw Chippewa Indian Tribe of Michigan, Sault Ste. Marie Tribe of Chippewa Indians of Michigan, Forest County Potawatomi, Ottawa Tribe of Oklahoma, Delaware Nation, Shawnee Tribe, and Wyandotte Nation.

⁵ These letters to Tribes are from G. Hatchett, Branch Chief, NRC, regarding request for consultation and participation in the scoping process for the environmental review for the Fermi Nuclear Power Plant, Unit 3 combined license application (Docket No. 52-033). As indicated in Enclosure 4, 12 of the letters are dated December 24, 2008, and 5 are dated December 31, 2008.

Fermi 3 Project NRHP-Eligible Historic Properties

Resource Address/Name	Resource Description	Construction Date	NRHP-Eligibility Status	NRC Impact Determination/Sept. 106 Effects Determination	MI SHPO Comments/Concurrence
Fermi Drive [Enrico Fermi Atomic Power Plant (Fermi 1)]	Onsite Nuclear Power Plant	1956	Recommended NRHP-eligible (Criterion A and C) ^(b)	Moderate Impact/ Adverse Effect/	Concurrence indicated in May 9, 2011 letter ^(c)
5046 Williams Road	Offsite Previously Recorded Front-gabled-style House	c. 1840	Determined NRHP-eligible ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
2381 Hurd Road	Offsite New England One and a Half-style House	c. 1850	Recommended NRHP-eligible (Criterion A and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
2122 N. Dixie Highway	Offsite Gabled-ell-style House	c. 1875	Recommended NRHP-eligible (Criteria A and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
2430 N. Dixie Highway (St. Anne's Catholic Church Grotto)	Offsite Vernacular-style Ecclesiastical Structure (Grotto)	1956	Recommended NRHP-eligible (Criterion C, Exception A) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
Near 4973 N. Dixie Highway	Offsite Greek Revival-style House	c. 1840	Recommended NRHP-eligible (Criterion A) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
5179 N. Dixie Highway (Dixie Skateland)	Offsite Vernacular-style Skating Rink	1958	Recommended NRHP-eligible (Criterion A) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
6068 N. Dixie Highway	Offsite Farmstead Complex: Side-gabled House and Vernacular-style Barn and Other Outbuildings ^(d)	c. 1885	Recommended NRHP-eligible (Criterion A) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
N. Dixie Highway (St. Charles Cemetery)	Offsite Late 19th Century Cemetery	1882	Recommended NRHP-eligible (Criterion A and Exception D) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
N. Dixie Highway (Old St. Charles [White or LaDue] Cemetery)	Offsite Mid-19th Century Cemetery	1851	Recommended NRHP-eligible (Criterion A and Exception D) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
8109 Swan Creek Road (St. Charles [Borromeo] Church Complex)	Offsite Victorian Gothic-style Church and Outbuildings ^(d)	1882-1886	Recommended NRHP-eligible (Criterion C and Exception A) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
6344 Trombley Road (Jacob Masserant Farmstead Complex)	Offsite Farmstead Complex: Hall-and-Parlor-style House, Three-Bay Threshing Barn and Associated Outbuildings ^(d)	c. 1853	Recommended NRHP-eligible (Criterion A and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
6511 Leroux Road (Joseph Fix Farmstead Complex)	Offsite Farmstead Complex: Gabled-ell-style House, Three-Bay Threshing Barn and Associated Outbuildings ^(d)	1878	Recommended NRHP-eligible (Criterion A and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3684 Brest Road (Frenchtown Township District No. 13 School)	Offsite Standardized School Plan-style School	1926-1927	Recommended NRHP-eligible (Criterion A and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3738 Brest Road (Dewey House)	Offsite Greek Revival-style House	c. 1840	Recommended NRHP-eligible (Criterion A, B and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)

Resource Address/Name	Resource Description	Construction Date	NRHP-Eligibility Status	NRC Impact Determination/Sect. 106 Effects Determination	MI SHPO Comments/Concurrence
Pearl Drive Historic District			Recommended NRHP-eligible (Criterion A and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3535 Pearl Drive	Offsite Prairie-Colonial Revival-style House	c. 1927	Contributing element ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3555 Pearl Drive	Offsite Prairie-Colonial Revival-style House	c. 1927	Contributing element ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3575 Pearl Drive	Offsite Prairie-Colonial Revival-style House	c. 1927	Contributing element ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3595 Pearl Drive	Offsite Prairie-Colonial Revival-style House	c. 1927	Contributing element ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
2983 Third Street	Offsite Tudor Revival-style House (Cotswold Cottage/substyle)	c. 1940	Recommended NRHP-eligible (Criterion C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3677 Lakeview Drive	Offsite Contemporary Folk-style House	c. 1945	Recommended NRHP-eligible (Criterion C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3360 Elmwood Street	Offsite Mediterranean-style House	c. 1940	Recommended NRHP-eligible (Criterion C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3390 Lawndale Street	Offsite Queen Anne-style House	c. 1910	Recommended NRHP-eligible (Criterion A) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3518 Nippising Street (Indian Trails Clubhouse)	Offsite Vernacular-style Civic Building	c. 1930-1940	Recommended NRHP-eligible (Criterion A and C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
3606 Lakeshore Drive	Offsite Mediterranean-style House	c. 1940	Recommended NRHP-eligible (Criterion C) ^(a)	Small Impact/ No Adverse Effect	Concurrence indicated in May 9, 2011 letter ^(c)
Source: Demeter et al. 2008; Kurunda et al. 2009 (a) Demeter et al. 2008. (b) Kurunda et al. 2009. (c) Conway 2011a. (d) Two or more architectural resources were evaluated at this location.					

The proposed Fermi 3 project will have an adverse effect on one historic property (Fermi 1), which is located within the direct APE, and will have no adverse effect on the remaining 21 historic properties, which are all located within the indirect APE. The findings of no adverse effect on 21 historic properties and the finding of adverse effects on the NRHP-eligible Fermi 1 property and the resulting Memorandum of Agreement (MOA) are discussed in the following section.

FINDINGS OF EFFECT AND MEMORANDUM OF AGREEMENT

During its environmental review and as documented in the draft EIS, the NRC staff identified that the proposed Fermi 3 project would have a potential adverse effect on one historic property (Fermi 1), which is located within the direct APE. Fermi 1 has been recommended eligible for listing in the NRHP under Criteria A and C as part of a separate undertaking (Kurunda et al. 2009). As previously stated, the MI SHPO concurred in its May 9, 2011, letter (Enclosure 1) with NRC's adverse effect and NRHP eligibility determinations.

The Fermi 1 unit at Detroit Edison's Fermi facility is currently undergoing decommissioning as part of a separate action by Detroit Edison. Decommissioning of Fermi 1 has been determined to have no adverse effects on historic properties according to a letter from the MI SHPO dated

May 9, 2011⁶. If Fermi 3 is licensed and preconstruction activities begin, demolition of the Fermi 1 external structure cannot be avoided because it is within Fermi 3's power block construction area, and the Fermi 3 construction area footprint cannot be relocated.

During its environmental review and as documented in the draft EIS, the NRC staff identified that the proposed Fermi 3 project would have no potential adverse effects on the remaining 21 NRHP-eligible historic properties, all of which are architectural or aboveground resources that are located within the direct APE. As recommended by the MI SHPO, the NRC has prepared a Memorandum of Agreement (MOA) to resolve the potential adverse effects of demolishing Fermi 1. A draft MOA was mailed to the MI SHPO on August 25, 2011, and was revised per comments provided by the SHPO on September 27, 2011. The NRC and MI SHPO discussed these comments, and all three signatories agreed on a revised version of the MOA (Enclosure 5) on September 29, 2011. The NRC is in the process of mailing a letter with this MOA attached to seven potentially interested parties, which were chosen in consultation with the MI SHPO. This letter will effectively provide the public with the opportunity to comment on resolving adverse effects of the undertaking. After addressing or incorporating any comments received from the potentially interested parties, the MOA will be revised and/or finalized and mailed to the signatories for their approval and signature.

As mentioned in the introduction to this letter, NRC staff requests your comments and recommendations within 30 days of receipt of this letter and associated materials. If you have any questions or require additional information, please contact Mr. John Fringer, Environmental Project Manager, at (301) 415-6208, or at John.Fringer@nrc.gov.

Sincerely,

/RA/

Brent Clayton, Acting Chief
Environmental Projects Branch 2
Division of Site and Environmental Reviews
Office of New Reactors

Docket No.: 52-033

Enclosures: As stated

⁶ Conway, B.D. 2011b. Letter from Brian D. Conway (State Historic Preservation Officer, State Historic Preservation Office, Michigan State Housing Development Authority) to Theodore Smith (NRC) dated May 9, 2011, "Subject: ER06-683, Enrico Fermi Atomic Power Plant – Unit 1 (Fermi 1) License Termination Plan (LTP), Sections 16 & 21, T6S, R10E, Frenchtown Township, Monroe County (NRC)." Accession no. ML111440368

dated May 9, 2011⁷. If Fermi 3 is licensed and preconstruction activities begin, demolition of the Fermi 1 external structure cannot be avoided because it is within Fermi 3's power block construction area, and the Fermi 3 construction area footprint cannot be relocated.

During its environmental review and as documented in the draft EIS, the NRC staff identified that the proposed Fermi 3 project would have no potential adverse effects on the remaining 21 NRHP-eligible historic properties, all of which are architectural or aboveground resources that are located within the direct APE. As recommended by the MI SHPO, the NRC has prepared a Memorandum of Agreement (MOA) to resolve the potential adverse effects of demolishing Fermi 1. A draft MOA (Enclosure 5) was mailed to the MI SHPO on August 25, 2011. The NRC has not received any comments on the MOA from any signatories to date. After review, comment, and/or concurrence by the MI SHPO, or if no response is received by September 28, 2011, the NRC will mail a letter describing the proposed mitigation stipulations of the MOA to six potentially interested parties, which were chosen in consultation with the MI SHPO. This letter will effectively provide the public with the opportunity to comment on resolving adverse effects of the undertaking. After addressing or incorporating any comments received from the potentially interested parties, the MOA will be revised and/or finalized and mailed to the signatories for their approval and signature.

As mentioned in the introduction to this letter, NRC staff requests your comments and recommendations within 30 days of receipt of this letter and associated materials. If you have any questions or require additional information, please contact Mr. John Fringer, Environmental Project Manager, at (301) 415-6208, or at John.Fringer@nrc.gov.

Sincerely,
Ryan Whited, Chief
Environmental Projects Branch 2
Division of Site and Environmental Reviews
Office of New Reactors

Docket No.: 52-033

Enclosures: As stated

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⁷ Conway, B.D. 2011b. Letter from Brian D. Conway (State Historic Preservation Officer, State Historic Preservation Office, Michigan State Housing Development Authority) to Theodore Smith (NRC) dated May 9, 2011, "Subject: ER06-683, Enrico Fermi Atomic Power Plant – Unit 1 (Fermi 1) License Termination Plan (LTP), Sections 16 & 21, T6S, R10E, Frenchtown Township, Monroe County (NRC)." Accession no. ML111440368