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SUBMITTED VIA E-MAIL AND FIRST-CLASS MAIL

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Michael Drumheller, Assistant Chief of Staff for Installation Management
Headquarters, Dept. of the Army
Base Realignment and Closure Division (DAIM-BD)
600 Army Pentagon
Washington DC 20310-0600
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Marc Boldt, Betty Sue Morris, Steve Stuart
Board of Clark County Commissioners
P.O. Box 5000
Vancouver, Washington 98666-5000

RE: INFORMAL NOTICE OF INTENT TO SUE OVER THE FAILURE TO
ADDRESS SIGNIFICANT NEW INFORMATION IN THE ENVIRONMENTAL
ASSESSMENT FOR DISPOSAL AND REUSE OF CAMP BONNEVILLE,
WASHINGTON.

Dear Mr. Drumheller, Mr. Boldt, Ms. Morris, and Mr. Stuart:

We, the undersigned, hereby give this informal notice to the Department of the Army and Clark County Commissioners of our intent to bring a lawsuit challenging the Environmental Assessment for Disposal and Reuse of Camp Bonneville, Washington (EA). This letter is provided by the Rosemere Neighborhood Association (RNA), P.O. Box 61471, Vancouver, WA 98666, (360) 906-8810. We are prepared to bring suit under the citizen suit provisions of the National Environmental Policy Act (NEPA) if the deficiencies in the EA are not corrected. Pending the final Finding of Suitability for Early Transfer, we are also prepared to send a 60-day notice of intent to sue under citizen suit provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) if the early transfer of this property continues without compliance with all NEPA and CERCLA requirements. The RNA has sufficient grounds for filing suit for various violations of both laws.

Clark County, the intended transferee of the Camp Bonneville property, may also be subject to litigation due to failure to comply with Washington's State Environmental Policy Act (SEPA). Clark County states in its Determination of Non Significance and Adoption of Existing Environmental Documents for Camp Bonneville (July 27, 2006, WO# 22214) that, "We have identified and adopted this document (EA) [Camp Bonneville EA] and documents incorporated by reference as being appropriate for this

proposal after independent review.” Since Clark County has chosen to rely on the inadequate EA, it is also subject to potential litigation in this matter.

Camp Bonneville is located in Clark County, Washington approximately 10 miles East of Vancouver, Washington and 15 miles northeast of Portland, Oregon. Camp Bonneville is a former military base that was decommissioned in 1995 and slated by the Army as surplus property to be transferred. An EA was finalized in October, 2001 by the Corp of Engineers for the U.S. Army Forces Command. The EA sought to address environmental and socioeconomic consequences of several alternatives. The EA, however, fails to adequately consider the direct, indirect and cumulative impacts of the proposed land transfer and falls seriously short of NEPA’s requirement that agencies must take a “hard look” at the environmental consequences of their actions.

Additionally, the EA is almost five years old and over the last five years a large volume of significant new information has come to light about contamination at the site. See CFR 40 § 1502.9(c)(ii). This is a serious issue related to the land transfer because of the substantial questions regarding the characterization of the site, funding for site cleanup, the long-term feasibility of protecting the public and the environment from on-site risks such as UXO and toxics contamination.

The failures and inadequacies of the EA are numerous and they will not be catalogued in detail here. Generally, the EA does not include remediation of hazardous and toxic substances in the scope of the analysis. Rather, it addresses hazardous and toxic substances in non-substantive portions of the EA or defers such analysis to the CERCLA process.

Hazardous and toxic substances are discussed in sections dealing with opportunity for public comment (EA at 1-4, 5) and the procedural requirements for transfer (EA at 2.3.2.). The EA explains that an Environmental Baseline Survey (EBS) was performed pursuant to Community Environmental Response Facilitation Act (CERFA). This document lists CERCLA and non-CERCLA related environmental issues at Camp Bonneville. It is a major source of information for the Finding of Suitability for Transfer and helps determine whether any use should be limited or precluded. EA at 2.3.2.

The only substantial discussion of hazardous and toxic substances contained in the EA is the description of the baseline environment. EA at Section 4. The EA states that hazardous and toxic materials information is based on the final Environmental Baseline Study (EBS) (US Army Corps of Engineers 1997a) and that pursuant to BRAC requirements, “remediation of contamination identified in the EBS will be completed on all Camp Bonneville properties being transferred to nonfederal entities.” EA at 4.9.

The areas of concern described in section 4.9 include: hazardous materials in buildings and other storage facilities. *Id.* at 4.9.1; limited and outdated information on soil and groundwater contamination, *Id.* at 4.9.2; Polychlorinated Biphenyls contained in transformers and light ballasts, *Id.* at 4.9.4; and UXO which, “The Army is preparing an Engineering Evaluation/Cost Analysis (EE/CA) for Camp Bonneville UXO contamination. This report will determine

the course of action regarding further investigation and remediation of UXO." *Id.* at 4.9.6. Also, in discussing the Encumbered Disposal Alternative, the EA explains that the Army will retain responsibility and generally defers to CERCLA process already underway on-site. EA at 5.4. There is no clear authority for bifurcating environmental review between the NEPA and CERCLA processes.

There is no substantive discussion of the environmental impacts from hazardous and toxic waste on Camp Bonneville and more current information has not been incorporated into the NEPA environmental analysis. Old and new information has been reviewed in a piecemeal fashion without a comprehensive analysis of the potential impacts to the environment.

The EA, the EBS, the draft FOSET and the various survey documents created by the Army are inaccurate and do not adequately assess the property. The following deficiencies are of greatest concern:

- **The Army did not list the EPA in the appendix for parties consulted while preparing the EA.**
- **The Army has never performed a 100% digital geophysical survey of all areas of concern. This is the common practice for characterizing sites containing unexploded ordinance. The inadequate site characterization makes an accurate assessment of public and environmental risks impossible. Further, without the normal site characterization an accurate cost assessment is also impossible.**
- Clark County could be held liable for any injuries suffered by visitors to the property once the title is transferred. Clark County has not considered this economic impact.
- The Army Corps grid and site statistics, upon which the property assessment is currently based, only looked at 1% of site. This model is statistically flawed as noted by the Washington State Department of Ecology.
- The Army did not consult all available historical records. For example, additional Army maps of the facility have been identified that define Firing Range Impact Fans larger than those offered by the Army in its environmental studies.
- Aerial analysis shows that numerous targets were missed by the Army Corp's grid and site statistical survey and aerial survey methods of this kind cannot detect subsurface anomalies.
- It is unclear if the remediation of documented groundwater contamination at the site is included in the cost analysis of the cleanup. The level of contamination requires a more expensive two-step cleanup process, and this process has not been adequately outlined.
- There has not been adequate soil analysis at the site to determine toxicant loads throughout the property.
- No other site comparable to Camp Bonneville has gone through the early transfer process. There is concern that transferring the property to a limited liability

corporation will not provide adequate protection from liability, and whether the corporation has sufficient technical expertise to ensure adequate cleanup.

- The original intent of the re-use plan was to achieve clean-up levels that would ensure the site was completely safe for public use as a free-range public park. This entailed complete removal of all UXO. The current clean-up plan calls for an undetermined amount of UXO to remain on site in perpetuity and for the public to abide by institutional controls and behavior modification to avoid contact with UXO. These clean-up standards are inappropriate for the re-use plan and were not considered in the EA.
- Ammonium perchlorate and RDX plumes have been discovered in groundwater after attempts to clean-up these chemicals. Also, among other contaminants, chromium and mercury contamination have been discovered
- An additional training ground for hand grenades has been identified
- A previously un-disclosed chemical training ground has been identified
- Claims have been brought forward to contest the Army's cultural and archaeological survey that offer evidence of the existence of Native American archaeological sites at Camp Bonneville
- The EA assumed that there was a fence surrounding the base that effectively blocked human entry. It is now clear that this is not the case and the potential impact of UXO and on-site contamination is significantly greater than previously expected. It is well known that due to inadequate site security the public has had access to and has removed potentially dangerous objects, including UXO.

It has apparently been presumed that the FOSET, as the final agency action allowing the early transfer of Camp Bonneville, will serve as the functional equivalent of NEPA analysis. Functional equivalence is a judicially created doctrine that states that when the Environmental Protection Agency (EPA) undertakes an analysis of environmental impacts under CERCLA, this analysis may serve as the functional equivalent of a NEPA EA or EIS. However, functional equivalence is **not** applicable to CERCLA actions undertaken by the military under CERCLA § 9620 (Section 120). *Fort Ord Toxics Project, Inc. v. California E.P.A.*, 189 F.3d 828, 834 (9th Cir. 1999). Thus the Army's use of the CERCLA Section 120 transfer process cannot serve as a substitute for NEPA review. Section 120 is clear on this matter when it states that the provisions of the section do not affect the duties or obligations of any Federal agency created in another act. CERCLA § 9620 (h)(3)(C)(iv). Here, BRAC expressly requires NEPA compliance. BRAC § 2905 (c)(2)(A). Thus the Army must fully comply with all NEPA requirements and should not have bifurcated the environmental review.

The failure to perform an analysis of the cumulative and ongoing impacts of the proposed action is magnified in light of the significant new information that has been discovered since the publication of the EA in 2001. The fact that the EPA was not consulted in the preparation of the EA underscores the failure to adequately assess all environmental impacts. The EPA expressed serious concerns with the proposed transfer that have not been addressed through either the NEPA or the CERCLA review procedures.

For these reasons we believe that the proposed transfer is premature and that the Army must prepare an EIS which fully describes the existing contamination and UXO at Camp

Bonneville. The EIS must evaluate all of the costs and impacts of cleanup. Also, full NEPA compliance would ensure that the County performs its duty under SEPA.

This letter does not indicate that the RNA is against an eventual transfer of the property to an appropriate party or parties once compliance with all applicable laws and regulations has been achieved. We would be happy to discuss these issues with you further, and we can arrange meetings to initiate open discussion and problem-solving in these matters.

Sincerely,



Richard Till
Attorney at Law
WSBA 35539



Dvija Michael Bertish, Chairman
Rosemere Neighborhood Association

c.c.

Betty Sue Morris, Clark County Commissioner
Marc Boldt, Chair, Clark County Commissioner
Steve Stuart, Clark County Commissioner
Bronson Potter, Clark County Attorney
Jerone Kok, Vancouver/Clark Parks & Recreation Dept.
Pete Capell, Clark County Public Works
Governor Christine Gregoire
Rob McKenna, Attorney General of Washington State
Barry Rogowski, Toxics Cleanup, Ecology Headquarters, Washington Dept. of Ecology
Tim Nord, Toxics Cleanup, Ecology Headquarters
Ben Forson, Toxics Cleanup, Ecology Headquarters
Greg Johnson, Toxics Cleanup, Ecology Headquarters
Thomas Eaton, Director, EPA Washington Operations Office
Harry Craig, RPM, U.S. EPA, Region 10
Nancy Harney, FF Cleanup Lead/RPM, EPA Region 10
Doug Sutherland, Commissioner of Public Lands, Department of Natural Resources
Colonel Robert Derrick, Dept. of the Army, BRAC Division
Joseph W. Whitaker, Dept. of the Army Office of the Assistant Secretary, Pentagon
Addison D. Davis, IV, Deputy Assistant Secretary of the Army, Pentagon
U.S. Senator Maria Cantwell
U.S. Senator Patty Murray
Congressman Brian Baird
Congressman Earl Blumenauer
State Representative Richard Curtis

State Representative Bill Fromhold
State Representative Ed Orcutt
State Representative Deb Wallace
State Senator Joseph Zarelli
State Representative Jim Moeller
Congressman Earl Blumenauer
Congressman Sam Farr
Paul Lumley, Senior Tribal Liaison, Pentagon
Patricia Ferrebee, Director, Environmental Security, Pentagon
Daniel Snyder, US Geological Survey
Don Bivins, Chief, Vancouver Fire Department
Joe Mackey, Battalion Chief, Vancouver Fire Department
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