

ATTACHMENT 2

RESPONSIVENESS SUMMARY

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ON THE DRAFT FINDING OF SUITABILITY FOR EARLY TRANSFER (FOSET) WITH A
CERCLA 120(h)(3) COVENANT DEFERRAL HOUSING AREAS AND FORMER
GARRISON PARCELS
FORMER FORT ORD, CALIFORNIA
DATED NOVEMBER, 1999

I. FORT ORD TOXICS PROJECT, INC., ARC ECOLOGY, COMMENTS DATED
DECEMBER 3, 1999

General Comments:

Comment: In order to execute the proposed Covenant Deferred CERCLA transfer the Army must show the subject parcels have been adequately addressed and evaluated to assure that:

- (a) the transfer will not delay environmental response actions
- (b) the reuse of the property will not pose a risk to human health or the environment
- (c) the federal government's obligation to perform all necessary response actions will not be affected by early transfer of the property.

After reviewing the FOSET, I conclude that the Army has failed to prove items (b) and (c).

The Army has not proved the claim that reuse of the subject parcels will not pose a risk to human health. There are three reasons:

- (1) Transferring these parcels will improve public access to adjacent parcels known or suspected to be contaminated with ordnance waste. This is particularly true of Parcel L32.4.1.
- (2) The Army did not base their conclusions on the latest information available. The Army did not consider or rely on the information collected in the Draft Literature Review Report (09/1999), nor the analysis presented in the Draft Track 0 Technical Memorandum for Ordnance and Explosives (11/1999). The Army should refrain from signing the FOSET at least until these documents have been finalized and included into the FOSET.
- (3) The Army has not investigated the possibility of finding Chemical Warfare Materials (CWM) such as Chemical Agent Identifications Sets (CAIS) in and around the landfill areas off of Imjin Road. Two incidents in 1997 indicate that CAIS are buried in the area (see attachments). Furthermore the Army report entitled "Survey and Analysis Report, Second Edition," by the US Army Manager for Chemical Demilitarization makes the case that CAIS was used at Fort Ord, and disposed of by burying (the common method of disposal at

the time), prior to 1974. If encountered by unsuspecting people, these CAIS sets and other CWM will pose a serious risk to human health and safety.

The Army also has not proved the claim that transferring these parcels now will not interfere with the federal government's obligation to perform all necessary response actions. The Army has already decided these parcels are "clean," without their having completed the no-further-action CERCLA record of decision (ROD) for the subject parcels (scheduled to happen in April of 2000). If transferred for unrestricted use, it will be left up to the new owners/users to find any remaining ordnance and CWM contamination. In other words, the Army appears to be relying on civilian "construction support" to finish their remedial cleanup obligations. This strategy in fact interferes with the orderly and safe investigation and cleanup of these Superfund site land parcels. This is particularly true of parcels L32.4.1, L1515.1, L2.4.2, L2.4.3.1.

Parcel S.2.5.2.1 appears to be located in the landfill area. How the Army will ensure any redevelopment in this area will not interfere with the integrity of the landfill cap (and sidewalls) and the functioning of the groundwater extraction/injection treatment system located in the area is not clear. This must be spelled out in the FOSET.

- Response: (1) None of the OE sites near the parcels proposed for transfer in this FOSET are presently suspected to be contaminated with OE. All ordnance sites adjacent to or near the parcels proposed for transfer in this FOSET have undergone an evaluation for the potential presence of OE. Each potential OE area underwent an initial evaluation consisting of an archive search to determine if the area in question was used as an OE training area and if so, what the type and duration of use was. If the archive search identified an area as suspect, OE sampling was performed. All OE sites near the parcels proposed for transfer in this FOSET have undergone, at a minimum, OE sampling. If no OE was found the site was recommended for no further action. If OE was found during sampling or evidence of high explosive (HE) use was identified (as OE scrap), a removal action was completed.
- (2) The Army did utilize the results of both the Draft Final Literature Review Report and the Draft Final Track 0 Technical Memorandum in the preparation of this FOSET. References to these documents were added to the Version 2 FOSET.
- (3) No attachment was included with the comment letter. The landfill area to the north of Imjin Road has been completely excavated, all material has been incorporated beneath the landfill cap to the south of Imjin Road. The area to the south of Imjin is not being considered for early transfer at this time, but has been extensively investigated, with some areas excavated as part of the landfill closure. No chemical agent identification sets or chemical warfare materiel was encountered during the excavation of the landfill north of Imjin, or in any other excavation completed in the area of Imjin Road. During the excavation of the landfill north of Imjin, two incidents occurred which required work be stopped for further

investigation. Analysis showed that the volatile compound involved was methane, not unexpected in landfills.

The possibility of chemical warfare materiel use at Fort Ord had been researched by the Army's Non-Stockpile Chemical Warfare Materiel Program. The Non-Stockpile Chemical Warfare Materiel Program oversees the handling and disposal of all types of non-stockpile chemical materiel within Department of Defense. A comprehensive search was conducted at Fort Ord but did not uncover any evidence in records, interviews or other information sources to indicate that chemical weapons were ever stored, used, or buried at Fort Ord. The installation did, however, receive chemical warfare materiel in the form of Chemical Agent Identification Sets (CAIS). CAIS were used on Fort Ord prior to 1974 to train soldiers in the identification of chemical warfare agent and in proper responses upon identification. There has been only one instance of CAIS discovery at Fort Ord, during an OE removal action at OE Site 13B in 1997. This discovery was properly handled in accordance with protocols established by the Non-Stockpile Chemical Warfare Materiel Program.

Regarding the report cited, Fort Ord is identified as classification 4 (possible burial). To meet that classification, an installation need only meet one of the following: (1) the installation was operational during the timeframe when burial of chemical weapons might be possible; (2) that the normal duties performed at the site indicate some possibility that chemical weapons may have been buried; or (3) that some literature exists that chemical agent identification sets were used extensively at the site in such a way that (although the literature does not indicate it) some chemical materiel may be present. In 1997, two Chemical Agent Identification Sets were discovered in one incident during ordnance removal actions in OE Site 13B, an area not currently being considered for early transfer. The sets were removed from the installation and properly disposed. No other evidence of chemical agent identification sets or chemical materiel has been discovered in the excavations, borings, and other intrusive activities conducted as part of the extensive investigation of the Installation.

Parcel S2.5.2.1 is not located over any part of the landfill. The deed will restrict well drilling, tampering with the monitoring wells, and use of the groundwater below the property for drinking water supply.

Specific Comments:

Comment 1: It would be helpful if the maps showing parcel locations were more detailed. The maps should show not only where on the former Fort Ord the parcel is located (using an insert) but also the street names, building numbers, and location of adjacent OE sites.

Response 1: The adjacent OE sites have been added to the FOSET plates. Detailed maps for the FOSET parcels are included in the Community Environmental

Response Facilitation Act (CERFA) Report and the Environmental Baseline Surveys (EBSs) referenced in the FOSET.

Comment 2: Five parcels listed on the "Property Description" table in the FOSET are not listed on "Table 1: Track 0 Parcels Groupings." Although the Draft Track 0 Technical Memorandum is not specifically referenced in the FOSET, it is my understanding that only "Track 0" parcels were considered for early transfer. The subject parcel numbers are E4.3.2.2, S1.3.1, S1.5.2, S1.5.2, and S2.5.1.1. If these parcels do not qualify for Track 0, then they have outstanding ordnance contamination that precludes them from being suitable for early transfer.

Response 2: All parcels in this document do not contain OE sites and would thus also be classified as Track 0 Parcels in the ongoing OE RI/FS, which is being prepared independently and parallel to this FOSET. However, any work done so far in the OE RI/FS process is reflected in the FOSET. The requirement for an early transfer is not the absence of OE sites or identification as "Track 0", but the finding that the property is protective of human health and the environment for the intended reuse.

Summary Comment:

In summary, for these reasons I find this FOSET inadequate. I recommend that the Army not sign this FOSET. I believe the Army needs to modify/improve the FOSET (by providing more detail and context, including information from the Army's Literature Review Report, Non-Stockpile Chemical Material Report, Track 0 analysis, and resolving other discrepancies) and offer it again for public comment.

I also recommend that the Army remove the "Surplus II Area B" parcels from the FOSET unless the Army can prove (a) that CWM/CAIS is not likely to be found at Fort Ord, and (b) adequate site security will be provided on adjacent OE-contaminated parcels.

Likewise, the UCMBEST parcels located on or adjacent to existing landfill cells should be reconsidered for early transfer unless (a) CWM/CAIS is demonstrated to not be on site, and (b) the OU-2 landfill pump and treat system integrity can be shown to be unaffected by transfer and proposed redevelopment.

Response: Comments were received from the U.S. EPA, the Department of Toxic Substance Control (DTSC) Cal EPA, Sierra Club-Ventana Chapter, and U.S. EPAs Technical Assistance Grant (TAG) recipient. The FOSET was modified based on comments received.

Regarding CAIS, see comment 3 above.

Regarding the UCMBEST parcels see comment 3 above.

II. SIERRA CLUB-VENTANA CHAPTER, DATED DECEMBER 5, 1999

General Comments:

The Sierra Club, Ventana Chapter, among other impacted parties in the Monterey Bay area, has stated previously that early transfer of Fort Ord lands is not acceptable. The demand has repeatedly been made that no additional lands be transferred until the RI/FS (Remedial Investigation Feasibility Study) process has been completed.

The RI/FS analysis must include all former Fort Ord lands, fence line to fence line, whether any particular parcel has been transferred to an entity other than Army or not.

Response : A September 1996 amendment to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) allows Federal agencies to transfer property through a deferral process, before all necessary cleanup actions have been taken. Deferral of the CERCLA covenant is based upon, among other findings, that the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment. Early transfer of former Fort Ord land will include: 1) those areas where no evidence of ordnance use exists; 2) suspect areas where OE sampling has occurred, but no OE was found and; 3) former areas of ordnance use that have undergone a removal of ordnance and are in a condition that is suitable for the intended reuse.

The comment is not applicable to the FOSET.

Specific Comments:

The following are examples of concerns regarding the above referenced documents:

Comment 1: FOSET parcels are proposed for transfer on the basis of no "paper trail" indicating that there was any OEW activity on those sites. In other words, the absence of information leads to the conclusion that there was not any activity. This is not acceptable. A physical search for OEW must be completed on all parcels.

Response 1: This FOSET includes parcels of land that were developed by the Army at the time of purchase and show no evidence of ordnance use through the archives search and the literature review. Numerous site walks in support of the completion of the CERFA investigation, the EBSs, and the Basewide RI/FS for chemical contamination, found no evidence of ordnance use. Additionally, the Basewide RI/FS investigation included geophysical surveys and the excavation of several areas within the parcels, as well as adjacent to, and no evidence of ordnance use was found. The parcels in this FOSET include former military housing and military support facilities.

Comment 2: FOSET Parcels E4.3.1 and E4.3.2.2 (part of Abrams) and E4.1.1 and E4.2 (part of Lower and Upper Patton) are contiguous to the Parcel associated with OE-13A. It is not acceptable to transfer land destined for urban reuse that is contiguous to contaminated OEW parcels. Further, it must be stressed that OE-13A is also contiguous to the former Fort Ord landfill which produced at least one toxic plume in the groundwater. No future housing or other urban reuse should be allowed on OE-13A or contiguous to the capped toxic landfill.

Response 2: Parcels E4.1.1 and E4.3.1 are not contiguous with any OE sites, they are only adjacent to areas surrounding suspect OE sites. Parcel E4.2 is not adjacent to any OE area and Parcel E4.3.2.2 is no longer part of this FOSET. In addition Site 13A has undergone an OE removal action.

The parcels in question are not contiguous to the landfill cap. The U.S. EPA concurred that the pump-and-treat remediation system for the OU 2 groundwater plume is in place and operating properly and successfully" in a letter dated January 4, 1996. Drilling of wells and use of the groundwater under the property as well as tampering with the monitoring wells will be prohibited in the deed.

Comment 3: There is great concern over exposing construction workers and residents to OEW parcels. The issue of the proximity of civilian housing to the capped, vented landfill must be addressed.

Response 3: None of the Parcels in this document were suspect of containing OE. Of the areas remaining on Fort Ord that may contain OE, the areas that pose risk have been fenced and warning signs are posted. The Army is in the process of completing the removal actions in other areas. In addition the Army has a public education program to ensure that the people living and working on the former Fort Ord are aware of the potential presence of OE that may exist on some parts of the Installation.

The proximity of the capped landfill to housing was evaluated in the Basewide RI/FS and approved in an OU2 ROD, dated October 1995.

General Comment:

For these reasons the Ventana Chapter cannot support early transfer or piecemeal release of Fort Ord lands without a full comprehensive RI/FS process from fence line to fence line. Transfer of lands without analysis and cleanup via the RI/FS process is not acceptable.

The Sierra Club, Ventana Chapter, is not only concerned about the particular actions and process being contemplated by Army but is concerned with the precedent that is being established.

Please withdraw the above referenced FOST and FOSET from consideration. Army and other interested parties must concentrate efforts on

the RIFS process for the lands formerly known as Fort Ord.

Response: Based on the present work that has already been accomplished for the Basewide RI/FS; the Army can make the statement that the proposed property transfer is consistent with the protection of human health and the environment for the intended use and thus the property is eligible to be transferred under a FOSET.

III. DEBORA BAILEY, COMMENTS DATED NOVEMBER 16, 1999

General Comments:

Comment 1: The early transfer is not necessary – “job and revenue loss” is a big myth – the real cause of revenue loss was the opening of big-box stores in Sand City.

Response 1: The Early Transfer of Property is initiated by the future recipient of the Property. The environmental documentation is not to determine future jobs and revenues, but rather to examine if the property is protective of human health and the environment for the intended reuse.

Comment 2: The “Early” or “dirty” transfer must not happen! The Army fails to adequately describe the environmental condition of the property in these documents.

Response 2: The document has been revised to include more detail describing the Environmental Condition of the Property and thus adequately assesses the property for the intended reuse.

Comment 3: The Army has failed to interview enough people who served, worked, or lived, or witnessed what happened at Fort Ord. The Army only contacted or interviewed 23 people (of which only 7 were referenced in the Draft OE RI/FS Literature Review Report). Those 23 people were not at Fort Ord from the beginning to the end. They could not have witnessed every incident, accident, authorized burial, unauthorized burial, and dumping that was apparently common on the Superfund Site known as the Former Fort Ord.

Response 3: The Army did attempt to locate others who might have information on training at Fort Ord through publishing advertisements in both USA Today and the Army Times. Information collected from these interviews was included in the Literature Review. Interviews are not the sole basis for investigating historic uses of the former Fort Ord, but only one avenue used in the Literature Review. See Section 6.0 of the Draft Final Literature Review Report for the complete list of the references. Furthermore, this comment was addressed in the Army “Summary Of Public Comments And Responses On The Draft Literature Review Report”, included as Appendix E to the Draft Final Literature Review Report, dated January 4, 2000.

Comment 4: The Army and Harding Lawson Associates admit that records have been lost or destroyed. The archive search report is incomplete. Police records were not searched because it “would take too long.”

Response 4: The Army has made a conscientious attempt to search all applicable archives. The Military Police records would not shed too much light on any OE discoveries, since the Explosive Ordnance Disposal Detachment would have been notified to handle the incident and it would thus have been covered in those archives.

Comment 5: The current ordnance removal contractor, USA Environmental, Inc., does not fill out incident reports in response to ordnance finds that they determine are OE scrap. This is an outrage. All OE, OEW, UXO, and OE scrap must be fully documented. If OE scrap is found that proves OE was used in the area.

Response 5: This comment is not applicable to the FOSET and was addressed in the Army "Summary Of Public Comments And Responses On The Draft Literature Review Report", included as Appendix E to the Draft Final Literature Review Report, dated January 4, 2000.

Comment 6: The Army fails to assess and evaluate these properties and others for (a) hazardous substances and contamination, (b) environmental impacts anticipated from intended use, (c) ordnance and explosives, and (d) the adequacy of use restrictions and notifications.

Response 6: Fort Ord, as well as parcels under consideration for transfer in the FOSET, were evaluated for the potential presence of chemical contamination under the Fort Ord Basewide Remedial Investigation /Feasibility Study. Environmental impacts anticipated from the intended reuse were evaluated in the Environmental Impact Statement, Fort Ord Disposal and Reuse. All of Fort Ord was evaluated for potential ordnance use in the Archives Search Reports. The Literature Review was a follow-up to the Archives Search and evaluated information identified after the completion of the archives search investigation. The known OE sites were evaluated through a literature search, interviews, site walks, and in many cases OE sampling and removal actions. Use restrictions, if applicable, will be included in the deed. Environmental notifications are included in the transfer documentation, as well as the deed.

Comment 7: The Army's Draft Ordnance and Explosives Remedial Investigation/Feasibility Study program is absurd in its inconsistencies. In the Draft Literature Review Report there is a paucity of contacts or interviews, missing records, lack of documentation, inadequate sampling, inadequate site walks, etc. It proves that more interviews, investigation, testing, and action is absolutely necessary for the protection of human health and the environment.

Response 7: A similar comment was addressed in "Summary Of Public Comments And Responses On The Draft Literature Review Report", included as Appendix E to the Draft Final Literature Review Report, dated January 4, 2000.

Comment 8: The future uses of these properties (and others at the former Fort Ord) does indeed present a current and future risk to human health and the environment.

Response 8: Based on the information gathered and evaluated to date, no threats to human health and the environment have been identified.

Comment 9: The Army has repeatedly failed to comply with the laws that are set in place by the U.S. Government and the State of California to protect human and the environment.

Response 9: The cleanup of chemical contamination at the former Fort Ord was completed in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendment and Reauthorization Act (SARA), established by the United States Government. The cleanup is done in combined effort with EPA, DTSC, and RWQCB. The Army is performing the Fort Ord OE RI/FS in accordance with the requirements for completing such studies contained in CERCLA.

Comment 10: The Restoration Advisory Board (RAB) must be reestablished. The community must be informed in order to oversee the "cleanup" process. The Army would rather not have the public and community involved, even though it is, and will be, the public and surrounding communities who are and will be suffering if proper cleanup is not implemented.

Response 10: The Comment is not applicable to this document.

Since 1994, monthly community meetings have been held to inform the public of the status of the Fort Ord environmental cleanup program and respond to questions and concerns about issues related to the cleanup program. A detailed description about the past community outreach activities is provided in Section 3.7 of the *Draft Community Relation Plan Update*.

Currently, community involvement meetings are held monthly and announced through local newspaper ads, e-mail mailing lists, and regular mailing lists, as well as on the Fort Ord Environmental Cleanup web page. Ms. Bailey is on our regular mailing list and is provided with meeting notices as well as information materials such as the quarterly newsletter, *Advance*.

Comment 11: The citizens of Marina would know very little were it not for EPA's Technical Assistance Grant recipient, the Fort Ord Toxics Project.

Response 11: Comment noted. The comment is not applicable to the FOSET.

Comment 12: The surrounding cities and the Fort Ord Reuse Authority (FOR A) must not be so greedy as to risk the health and safety of humans and the environment with this early or dirty transfer. I understand why the Army wants to dump this land on our cities. The Army is known for dumping toxic and dangerous substances and materials. Why is Marina also willing to harm their citizens and the environment?

Response 12: Comment is not applicable to the FOSET.

Comment 13: Whereas the Army fails to adequately describe the environmental condition of the property, whereas the Army has failed to interview adequate numbers of people who served at Fort Ord, whereas the Army admits to missing or

destroying records and a lack of documentation, the Governor, EPA and DTSC must not defer the covenants that are required by law to protect human health, safety, and the environment.

“Facts do not cease to exist because they are ignored.”

Response 13: The Environmental Condition of the Property has been adequately described to meet requirements as described under CERCLA for early transfer of the Property.