



Via electronic mail

landconveyanceEA@rl.doe.gov

October 19, 2012

Ms. Paula Call
NEPA Document Manager
US Department of Energy
Richland Operations Office
PO Box 550, MSIN A2-15
Richland, WA 99352

Re: Scoping Comments on the Department of Energy's Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed Conveyance of Land at the Hanford Site, Richland, WA and Notice of Potential Floodplain and Wetland Involvement.

Dear Ms. Call,

I am writing on behalf of Hanford Challenge to provide comments on the Department of Energy's Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed Conveyance of Land at the Hanford Site, Richland, WA and Notice of Potential Floodplain and Wetland Involvement. Hanford Challenge is a nonprofit organization working to ensure a safe and effective cleanup of the Hanford Nuclear site. We provide legal support for workers and whistleblowers at Hanford and work to engage the public and stakeholders on important Hanford issues. Our membership base includes individuals in the Tri-Cities, eastern Washington and around the Pacific Northwest. On behalf of our membership, thank you for considering our comments.

Procedural Comments

We appreciate DOE's openness to questions and commentary at the scoping meeting in Richland on October 10, 2012. However, there should have been meetings held outside the Tri-Cities as well or at least the opportunities for the public to participate remotely. Broad public involvement on issues affecting Hanford is of the utmost importance and future uses on-site affect the economy and environmental health of the region beyond the Tri-Cities. We request that future public meetings are scheduled in more locations and/or are accessible remotely via phone and internet.

Comments on the Assessment and 10 CFR 770 Proposal

Hanford Challenge supports the safe development of a small portion of Hanford land to promote the economic viability of the Tri-Cities as well as the development of clean, renewable energy. Any development should be limited to that which will not further contaminate the Hanford Site,

the Columbia River or the region, respect the bio-diversity of the Hanford Site, and honor tribal commitments. Any proposed transfers, leases, developments or other site usages should comply with existing laws, rules and regulations, and be conducted in a transparent manner.

We encourage the DOE to perform a robust assessment and environmental characterization of the land to be transferred. A Hanford land transfer of this magnitude should trigger the need for a full Environmental Impact Statement. This assessment should include a thorough investigation of existing radiological and chemical contamination within the assessment area in order to determine the safety of the land for transfer, the potential for contamination to spread to the proposed transfer areas, the potential for development and industry to cause additional contamination or current contamination to spread, and to create a baseline assessment of any preexisting contamination. This investigation should involve a thorough assessment of the history of dumping radioactive and chemical contamination in unmarked sites. Not all information about where contamination will be is in official records, or documented on maps. Additionally, DOE should closely investigate the impacts of industrial development on the uranium plume, other known contaminated areas in the 300-Area, as well as yet-to-be discovered burial sites and plumes.

The Environmental Assessment should also seek to ensure no threatened or endangered species will be adversely affected by the land transfer or subsequent development. The region is home to numerous threatened and endangered species (flora and fauna), and as a Natural Resource Trustee, the DOE must ensure any development will not further endanger those species or their habitats.

Any Assessment should also be inclusive and respectful of Tribal rights, including full consultation with affected Tribes.

The Tri-City Development Council (TRIDEC) has requested the land be transferred in fee simple with indemnity. Due to the potential for continuing mission needs, such as security and safety, this is likely not the appropriate realty action. Hanford Challenge suggests a detailed assessment of future mission needs as well as various alternatives to fee simple depending on the land use and in order to ensure the safety, accountability, and economic viability of the transaction. Hanford Challenge opposes the transfer of such lands with indemnity. We question why, on top of the gift of land to private entities for commercial development, the taxpayer should be burdened with a liability for future uses of the site, which could be significant.

Furthermore, should DOE determine land parcels are safe for development, Hanford Challenge encourages DOE to seek the authority to transfer land for appropriate uses in a manner that could contribute financially not only to the economic viability of the area, but also to Hanford cleanup, which must become a top priority, in accordance with 10 CFR 770.8.

A land transaction of this size and scope should also require a more specific proposal regarding intended uses and development. The current TRIDEC proposal for the initial 1,341 acres fails to

denote specific intended uses, duration of use, the economic development that would be furthered or sufficient information supporting the economic viability of the proposed development as required by 10 CFR 770.7. Currently, only the proposal submitted as an addendum to the initial TRIDEC proposal for 1,341 acres, which includes a 300 acre parcel of land for Energy Northwest's solar park is sufficiently detailed for DOE to make a proper assessment of safety and impacts of such a transfer and use. Hanford Challenge supports this initial step towards creating an Energy Park in the Tri-Cities should the DOE determine that the location, land disturbance and water usage are safe and will not lead to the spread of contamination.

Due to the broad nature of the initial TRIDEC request for 1,341 acres, it is difficult to comment specifically on how the Environmental Assessment should be constructed to assess the proposed uses. DOE's proposed use of a maximum impact scenario to assess a range of uses in the EA does not solve the problem of an insufficiently detailed 10 CFR 770 proposal, as there are many factors to consider that cannot be adequately predicted.

Overall, Hanford Challenge strongly encourages DOE to promote the research, development, and generation of clean, renewable energy which does not include operations that generate radioactive or chemical/toxic wastes.

We also request that DOE prohibit development of the land that could add or exacerbate contamination to the area. DOE should restrict land use that would require irrigation and groundwater use to prevent the mobilization of known and unknown contaminants in the soil, and to prevent impacts to the 300-Area uranium and/or other plumes. Furthermore, we oppose any development that could bring additional chemical or radionuclide contamination to the region. Although the 10 CFR 770 proposal does not specifically mention nuclear development, communications received from our recent FOIA request and the news media show this is a desired path of TRIDEC and the MidColumbia Energy Initiative.

Some examples of recent media commentary on the development of small modular reactors include:

- "A small nuclear reactor project has been proposed as a possible component of a clean energy park at Hanford as DOE releases unneeded and environmentally clean land for other uses."¹
- "Small modular nuclear reactors are one possibility for a proposed clean energy park on unneeded and uncontaminated Hanford land near Energy Northwest."²

¹ *Tri-City Herald*, "Adviser promotes modular reactors", April 5, 2012. <http://www.tri-cityherald.com/2012/04/05/1892773/adviser-promotes-modular-reactors.html#storylink=misearch#storylink=cpy>

² *Tri-City Herald*, "DOE steps toward small reactors," Jan. 21, 2012. <http://www.tri-cityherald.com/2012/01/21/1795470/doe-steps-toward-small-reactors.html#storylink=misearch#storylink=cpy>

- “It's [TRIDEC] particularly interested in manufacturers of high-tech products or those that would require some technical skills in the workforce, such as a plant manufacturing advanced batteries being developed at Pacific Northwest National Laboratory in Richland or **manufacturing small modular nuclear reactors.**”³

The development of small modular reactors is an unsound investment for the economic and environmental sustainability of the region. There is still no solution for the cost, safety, and waste problems of nuclear power.

According to an in-depth study by Dr. Arjun Makhijani and Michel Boyd of the Institute for Energy and Environmental Research, “Efficiency and most renewable technologies are already cheaper than new large reactors... Relying on assurances that SMRs will be cheap is contrary to the experience about economies of scale and is likely to waste time and money, while creating new safety and proliferation risks, as well as new waste disposal problems.”

<http://ieer.org/wp/wp-content/uploads/2010/09/small-modular-reactors2010.pdf>

In accordance with the intention and spirit of the Tri-Party agreement, Hanford is a cleanup site, not a production site with regard to radioactive or chemical materials. A nuclear power plant or plants would significantly add to the immediate and long-term waste burden of an already overburdened site and should, therefore, be off the table.

Hanford Challenge supports the use of land determined to be safe for low impact development such as solar and wind energy generation, warehousing and potentially business services to the extent that development limits the use of water, exposure to contamination and supports the potential for future mission needs.

Thank you for your consideration!

Sincerely,



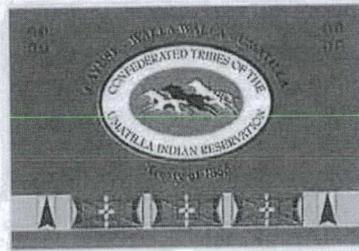
Tom Carpenter, Executive Director

cc: Mr. Woody Russell, Hanford Site NEPA Compliance Officer

³ *Tri-City Herald*, “DOE study looks at industrial development at Hanford,” September 25, 2012. <http://www.tri-cityherald.com/2012/09/25/2113445/doe-study-looks-at-industrial.html#storylink=misearch#storylink=cpy>

**Confederated Tribes of the
Umatilla Indian Reservation**

Department of Science & Engineering



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October 19, 2012

Ms. Paula Call
US Department of Energy
PO Box 550, MSIN A2-15
Richland WA 99352

Subject: CTUIR comments on the EA Scoping Period for Land Conveyance of 4,413 acres

Dear Ms. Call,

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have a vital interest in the current and future condition of Hanford, the Hanford Reach, Hanford Reach National Monument, and Hanford-affected lands and resources. The importance of the Hanford area to the CTUIR was codified in the treaties signed in 1855 between the federal government and the CTUIR [12 Stats. 945]. The Cayuse, Walla Walla, and Umatilla Tribes reserved the rights of access and use of lands and resources in the Hanford area to catch and eat fish, erect temporary buildings for curing fish, hunt and consume game birds and animals, gather and consume plants, engage in vision quests, participate in sweat lodge ceremonies, use plants for medicinal and cultural purposes, visit and maintain burial sites, pasture livestock, and participate in other traditional use of the environment.

Our peoples have lived and thrived in the Columbia Basin, including the area that is now Hanford, for over 10,000 years. The Hanford nuclear reservation contains resources that include one of the last contiguous desert shrub steppe habitats within the Columbia Plateau, spawning habitat for endangered salmonids, and long stretches of riparian and aquatic resources. The CTUIR is also one of the federally-recognized Trustees of the biologic resources as well as the abiotic natural resources (soil, air, surface water, groundwater, and the Columbia River) across the Hanford facility, including the Hanford Reach National Monument. The CTUIR-Department of Science and Engineering (DOSE) and the CTUIR-Department of Natural Resources (DNR) - Cultural Resources Protection Program (CRPP) are charged with the Responsibility to evaluate any activity that can affect the endstate and environmental conditions of Hanford and environs

As explained in the letter of July 1, 2011 to Matt McCormick signed by Leo Stewart, Board of Trustee (BOT) Interim Chairman, the CTUIR objects "to the transfer or lease of any land that affects the ability of the CTUIR to exercise treaty-reserved rights throughout the Department of Energy's Hanford Site or that results in loss or degradation of habitat or diminution of natural resources and ecosystems." Most of this letter was simply ignored by USDOE. This letter and its attachment should be referred to during the preparation of the NEPA analysis.

As requested in the letter from CTUIR to USDOE on July 1, 2011, the CTUIR again requests a more reasoned discussion of energy parks and/or industrial development, purchase of Tribal electricity or natural gas, and how USDOE can approach future land use without further harming tribal uses and resources.

Individual comments are provided in attachment A. If there are questions regarding cultural resources, please contact Mrs. Teara Farrow Ferman, Manager, Cultural Resources Protection Program at TearaFarrowFerman@ctuir.org or (541) 276-3447; for all other questions please contact myself.

Sincerely,



Stuart Harris, Director
Department of Science and Engineering
StuartHarris@ctuir.org
541-429-7437

Cc:

Teara Farrow Ferman, CTUIR-CRPP
Matt McCormick, USDOE
Jane Hedges, WA Ecology
Dennis Faulk, EPA
Russell Jim, YN
Gabe Bohnee, NPT
File

Attachments: A. Individual comments
B. July 7, 2011 Letter from Chairman Stewart

ATTACHMENT: A.

The issues raised in the July 1 2011 letter are still germane. Some highlights are repeated below.

1. Treaty Rights.

The letter of July 1, 2011 requested an affirmation by USDOE of Treaty rights across all of Hanford. The response said basically that USDOE will honor Treaty rights, but implied that CTUIR does not actually have any. This remains a contentious issue and CTUIR and USDOE have agreed to continue the discourse on the issue of Treaty rights.

2. Consultation.

The CTUIR still believes that "exchanges worthy of being considered 'consultation' have not yet taken place." The CTUIR still has no voice in the actual decision. It is important for the USDOE to understand that, consultation does not mean simply informing the CTUIR that their land will be given to private entities to develop. The NOI does not mention of Tribes; the Asset Revitalization Initiative does not either. This point is reiterated in several comments below.

The CTUIR requests formal predecisional consultation when the supporting reports (biological survey, history, etc) are done and delivered to CTUIR.

3. Land Use decisions and Reliance on the Comprehensive Land Use Plan (HCP-EIS).

CLUP Chapter 6. Page 6-1 of the CLUP says that DOE would implement "a site planning advisory board (SPAB) consisting of representatives from DOE, the cooperating agencies, and the affected Tribal governments." This has never been done, which effectively excludes Tribes from the decision process. This violates the CLUP Record of Decision and needs to occur prior to any land transfer.

Amended CLUP (HCP-EIS) ROD of 2008. The amended ROD says "In amending the 1999 ROD, DOE seeks to clarify two points: that when considering land-use proposals, DOE will use regulatory processes in addition to the implementing procedures in chapter 6 of the HCP-EIS." This declaration effectively removed Tribes from the decision process and eliminated the need to form a SPAB. This is a consultation and environmental justice issue that the CTUIR requests consultation and resolution on.

GSA process v 10 CFR 770 process. The GSA process for utilizing and disposing of Real Property is to first make such lands available to other federal agencies. Since CTUIR is a formally-recognized affected Tribe at Hanford, this could include the BIA on

behalf of the affected Tribes. In contrast, the “770 process” bypasses federal agencies, thus effectively removing Tribes from any possibility of regaining their land. Again, this is a consultation and environmental justice issue that the CTUIR requests consultation and resolution on.

4. Community Reuse Organizations

CROs were authorized by Congress as part of the Asset Revitalization Initiative. At Hanford, TRIDEC was selected by DOE as the CRO. However, TRIDEC does not have a formal relationship with CTUIR. TRIDEC has stated that they intend to immediately transfer the land title to the City of Richland, the Port of Benton, or to private entities for development. CTUIR has to assume transfer of title and subsequent loss of all rights and access. Conveyance to TRIDEC may seem like “a good investment for taxpayers,” but represents a take without compensation for Tribes and for Hanford’s Natural Resource Trustees.

DOE Order 430.1. This order requires DOE to list any real property deemed “excess” to be reported each year. In the case of the 4,400 acres and DOE’s Asset Revitalization Initiative, this land may not have ever been declared as “excess,” which might be a violation of DOE Order 430.1. This needs to be resolved.

The technical staff of the CTUIR believes that several provisions of DOE Order 430.1 are not being followed:

“Acquisition of real property assets greater than \$5 million must be in accordance with DOE O 413.3, *Program and Project Management for the Acquisition of Capital Assets*, dated 10-13-00 (reference n).”

CTUIR technical comment: The value of 4,400 Acres at local sales prices is greater than \$5M. Local prices advertised by the Port of Benton just south of Horn Rapids Road are on the order of \$50,000 per acre.

“When real property assets are identified as no longer required for current program missions, a disposition baseline must be developed to assess and prepare the assets for disposition.”

CTUIR technical comment: Please provide a copy of the disposition baseline for this property.

“Conveyance of the appropriate funding and budget targets along with the real property assets being transferred.”

CTUIR technical comment: Will DOE provide money to TRIDEC to monitor the Horn Rapids Landfill and groundwater each year?

“Excess real property assets that are appropriate for economic-development transfer must be identified and disposed of in accordance with 10 CFR 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development (reference b).”

CTUIR technical comment: CTUIR requests the document that identifies excess real property assets.

5. Cultural resources.

- CLUP Chapter 6 (Section 6.3.3) says that DOE will “implement DOE’s Land- and Facility-Use Policy (DOE O 430.1), which is to sustain cultural resources on the Site.” Furthermore, Section 6.3.6 says the policy would promote the DOE Site for “protection of natural, historic, and cultural resources to assure continued biodiversity and cultural values as essential elements of a recreation and tourism economy.”
- The National Historic Preservation Act (NHPA) Section 110 requires federal agencies to establish a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and the protection of historic properties. The DOE developed the Hanford Cultural Resources Management Plan for guidance on identification, evaluation, recordation, curation, and management of archaeological, historic, and traditional cultural resources. This plan needs to be followed and the CTUIR technical staff request that 100% survey of the entire 4,400 acres be conducted to identify, evaluate and nominate sites eligible to the National Register.
- A traditional use survey of the 4,400 acres should be conducted to determine if there are any historic properties of religious or cultural significance to Indian Tribes (HPRCSITs) in accordance with Section 106 of the NHPA.
- There should be land covenants to protect cultural resources on lands being conveyed, either by lease or by title. The example of the transfer of the 1100 Area shows that promises to develop covenants are made but not kept. Any conveyance must require that new owners or developers manage the land consistent with the Hanford Cultural Resources Management Plan, and this requirement needs to be detailed in any lease or deed. In this regard, not all of the management plans identified in the CLUP have been written, so it is premature to give land away before the management plans have been written.
- The No Action alternative should recognize that lack of development will preserve any cultural resources, whereas the proposed action would not. It is of the opinion of CTUIR technical staff that whether ownership is transferred by title or development allowed by lease, the ability of the CTUIR to manage and protect cultural resources would be diminished or eliminated.

6. USDOE should be aware that CTUIR may have energy development interests in this parcel since it has access to Richland utilities and the future natural gas pipeline. At present, although the CTUIR Department of Economic Development does not have a competing proposal the CTUIR technical staff requests that USDOE keep the door open so the first requestor does not get first choice if other entities such as CTUIR also deserve first consideration.

7. Environmental Justice.

Regardless of how the lands are conveyed, the CTUIR has to assume total loss of natural and cultural resources on all 4,400 acres; thus the CTUIR bears a disproportionate burden of the loss and none of the benefits. 4,400 acres is a significant amount of land to lose, even if it is a small portion of the overall Hanford area. – Due to the size of the proposed action, a FONSI is unacceptable. Further, because of the scope of the proposed action, an EIS is more appropriate due to the precedent setting actions of this undertaking. All of the Hanford precedents (the 1100 Area, the PNSO site, and statements by USFWS) point toward continued loss of access and resources and denial of Treaty-reserved rights despite repeated promises to the contrary. The No Action alternative should recognize that lack of development will preserve any cultural and natural resources and the potential for honoring Treaty rights, whereas the proposed action will result in complete loss.

The PNSO precedent. As explained in previous letters (July 1, 2011; April 30, 2008), the development of the PNSO was an example of what not to do. There was no useful consultation, promises of xeriscaping were not kept, and the loss of natural resources on the “PNNL campus” was not mitigated by PNSO. Land and resources were simply lost, and PNNL intends to develop the rest of 300 South, with further loss but no mitigation or replacement.

The 1100 Area precedent. As explained in the CTUIR letter of January 20, 2009, 700 acres were transferred to the Port of Benton with the stipulation that cultural provisions be followed as outlined in the CLUP. A MOA was developed, but DOE and the Port of Benton did not sign it. Thus, development is occurring without cultural resource review. The CTUIR has no reason to assume that this would be any different for the conveyance of new land that is currently proposed by USDOE.

8. Natural resource mitigation.

Loss of 4,400 acres of habitat with natural and cultural resources must include replacement with new land at a minimum of 1:1 replacement. Since there are active

dunes with unique ecology in the area to be developed, a 3:1 ratio is more appropriate. CTUIR requests that USDOE identify 12,000 acres that it will provide as mitigation.

9. Future uses are non-specific.

The NOI indicates that the intent is industrial development and commercial activities, with immediate transfer. They could include industrial manufacturing with permitted releases of hazardous and radioactive substances, fertilizers and pesticides, and large amounts of water. USDOE cannot simply assume that irrigation will be prohibited; it must assume agricultural quantities. Also, the Port of Benton has requirements for ordinary irrigated landscaping. PNSO could have used xeriscaping but installed ordinary irrigated landscaping instead.

10. Cumulative impacts.

The future portends more and more land loss, more and more irrigation water, and impacts on Siemens/Areva plume (TCE) and various 300 Area sources and plumes. The Richland dump and the firing range are upgradient, and the Horn Rapids landfill is in the area to be studied.

11. Environmental survey.

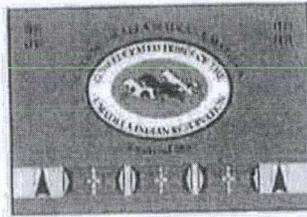
CTUIR/DOSE would like to propose developing a plan to conduct a botanical survey of the area. Please contact Stuart Harris to discuss this activity, or provide a contact with the entity that is performing the EA.

Attachment B.

July 1, 2011 CTUIR Letter to Matt McCormick,
DOE re: Hanford Land Transfers

**Confederated Tribes of the
Umatilla Indian Reservation**

Board of Trustees



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July 1, 2011

Mr. Matt McCormick, Manager
Richland Operations Office
US Department of Energy
P.O. Box 550
Richland, WA 99352

Subject: Proposed Hanford Land Transfers

Dear Mr. McCormick,

This letter constitutes a formal objection to the transfer or lease of any land that affects the ability of the CTUIR to exercise treaty-reserved rights throughout the Department of Energy (USDOE) Hanford Site or that results in loss or degradation of habitat or diminution of natural resources and ecosystems. Recently we have become aware that 1,341 acres of land located east of the HAMMER facility have been requested for transfer and we anticipate more requests in the future. Attached to this letter is technical analysis of the issues that need to be resolved prior to any future transfer of USDOE lands.

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have a vital interest in the current and future condition of Hanford, the Hanford Reach, and Hanford-affected lands and resources. Indian peoples have continuously occupied this region for at least 12,000 years. When non-Native Americans arrived in the Hanford area during the early 1800s, Native Americans were living in large villages along the Columbia River, including from the mouth of the Yakima River to Priest Rapids. Ancestral CTUIR fisheries, village sites, cemeteries, traditional use areas, and sacred sites are located throughout the Hanford Site. Many but not all of these important cultural resources have been identified and recorded as archaeological sites, traditional cultural properties, and cultural landscapes. More sites containing cultural resources are being discovered as the Hanford Site is inventoried and /surveyed.

The USDOE Hanford site was developed on land ceded by the CTUIR under the 1855 Treaty with the United States. Indian peoples were living on Hanford when the site was created in 1943. The CTUIR have treaty-reserved rights to hunt, fish, gather, and use lands and resources throughout and across the lands that are now Hanford. In addition, CTUIR has been recognized as a trustee of natural resources (air, soil, groundwater, surface water, and biota) throughout Hanford and its affected lands and waters since the establishment of the Natural Resource Trustee Council in 1991, including the area requested by local civic entities.

The Hanford land rush was anticipated and is coming to pass, so it is time for USDOE to decide how to implement true consultation and to engage CTUIR on the real endstate and future of Hanford. The CTUIR takes its responsibility to care for the Creator's resources very seriously

CTUIR Letter to Matt McCormick, Department of Energy
Re: Hanford Land Transfers
July 1, 2011
Page 2 of 2

and the Hanford site contains some of the resources that are most precious to the people of the CTUIR. The natural law is a covenant that conveys not only rights to use first foods, but also responsibilities to manage and care for them. The relation between CTUIR and natural resources is one of reciprocity. The CTUIR has already sacrificed the health of its traditional homelands immeasurably so that the Hanford site could exist and contribute to the security of our nation as a whole. The CTUIR would appreciate it if USDOE would recognize the CTUIR's rights, as well as its sacrifices, and afford the CTUIR the opportunity to have a robust and nuanced role in resource stewardship across and throughout Hanford.

The CTUIR is preparing to step into a role as a long-term steward of the lands and resources at Hanford, but we need to receive information directly from USDOE, not just from newspaper articles. We look forward to a frank dialogue with USDOE about the future of Hanford. Please contact Stuart Harris, Director of the CTUIR Department of Science and Engineering if you have any questions regarding this letter.

Sincerely,



Leo Stewart, Interim Chair
Board of Trustees

Enclosure: CTUIR Technical Analysis of Department of Energy Land Transfers

Cc: Senator Patty Murray, Washington State
Senator Maria Cantwell, Washington State
Congressman Richard 'Doc' Hastings
Governor Christine Gregoire, Washington
Dr. Ines Triay, USDOE
Jill Conrad, USDOE
Secretary Ken Salazar, Department of the Interior
Stanley Speaks, Portland Area Office, BIA
Jerry Lauer, Umatilla Agency, BIA
Larry Echo Hawk, Assistant Secretary Interior, BIA
Stuart Harris, CTUIR Department of Science and Engineering
Eric Quaepts, CTUIR Department of Natural Resources
Teara Farrow Ferman, CTUIR Cultural Resources Protection Program
Gabriel Bohnee, Nez Perce Tribe ERWM
Russell Jim, Yakama Nation ER/WM
Jane Hedges, WA Ecology
Rob Whitlam, Washington DAHP
Dennis Faulk, USEPA

CTUIR Technical Analysis of Department of Energy Land Transfers
July 1, 2011

The issues listed below must be resolved prior to any further consideration of transfer of title, lease, or management of Hanford lands from the Department of Energy (USDOE).

1. Treaty rights

The CTUIR retain usufructory Treaty-reserved rights throughout Hanford, including the area apparently requested for transfer. Treaty rights do not fade with time, and have not been extinguished. The importance of the Hanford area to the tribal nations was codified in the treaties signed in 1855 between the federal government and the tribal nations. The Cayuse, Walla Walla, and Umatilla Tribes reserved the rights of access and use of lands and resources in the Hanford area [12 Stats. 945] to catch and eat fish, erect temporary buildings for curing fish, hunt and consume game birds and animals, gather and consume plants, engage in vision quests, participate in sweat lodge ceremonies, use plants for medicinal and cultural purposes, visit and maintain burial sites, pasture livestock, and participate in other traditional uses of the environment and landscape.

USDOE has repeatedly assured us that initial resumption of gathering native plants would be occurring as "unrestricted surface use" within a year or two. Therefore, the CTUIR are beginning restoration and stewardship projects at Hanford in order to support and enhance the exercise of Treaty-reserved rights. Some of this work is probably within the area requested by local private entities.

The CTUIR requests affirmation that USDOE will honor Treaty rights across all of Hanford.

2. Consultation

There are several federal and USDOE documents (the USDOE Indian Policy, USDOE Order 144.1, Implementation Framework, Executive Order 13175) that require government-to-government consultation when federal actions may affect Indian Tribes, or their lands, rights, health, or resources. Clearly this is the case with any Hanford land decisions, whether this is transfer of management functions, leasing, or transfer of title. This is particularly true if title is transferred out of federal hands, which USDOE, as an agent of the federal government, has repeatedly assured us will never happen to any lands at Hanford. The CTUIR hopes that these were not merely words of convenience.

The entire process of establishing the "rule of law" means that all parties, including the dominant one, should not make vacuous promises it suspects it won't keep, made by people who do not have the authority to establish promises and verbal contracts. Exchanges worthy of being called "consultation" have not yet taken place. Consultation within the context of the rule of law refers to a cooperative strategy developed between equals in a respectful and timely manner; it is not just a means to continuation of one party's dominance over the other. Consultation is a collaborative

decision process between people who have decision-making authority. Consultation does not happen when non-authorities from USDOE simply provide information according to their understanding of decision-makers' current thinking. In effect, these non-authorities are often saying that, "if nothing changes, one outcome might be as we are presenting," or "this is what we intend to do if everything falls into place, if it remains convenient and in our best interest, if circumstances do not change, and/or if we do not change our mind." Indeed, this is one of the first lessons of diplomacy.

No consultation has occurred regarding land transfer, and no communication has occurred from USDOE about any formal request for 1,341 acres (editorial in the Tri-City Herald, June 7, 2011; reference is to a formal request in "recent weeks"). We have only read about it in the local newspaper, yet apparently USDOE started the clock on a 90 day review period at an unspecified point recently. We expect a true consultation process to begin long before any decision is made. Informing the Board of Trustees after a decision has been made is clearly not consultation.

Informational briefings to the CTUIR Board of Trustees about USDOE's "2015 Vision" do not constitute consultation. USDOE has not asked if their vision is acceptable. USDOE's own risk assessments (River Corridor Baseline Risk Assessment, Draft Tank Closure & Waste Management EIS) indicate that significant contamination will continue to make many of the resources unusable, potentially forever. Dialogue has not occurred, just one-way presentations.

The CTUIR requests affirmation that USDOE will implement its Indian Policy and fulfill the consultation process in more than a superficial manner.

3. GSA Process

DOE is required to offer excess lands to other federal agencies (including BIA). This means that the CTUIR should get a first right of refusal if lands are deemed to be no longer needed. USDOE has previously refused a request from the CTUIR to establish a field station for botanical and restoration research at Hanford on the same parcel that is now in question. It would be improper and even discriminatory to give land to a private entity instead.

The CTUIR requests confirmation that USDOE will follow the GSA process and offer BIA any excess lands if transfer of title or transfer of management or leases are considered.

4. Cultural resource review

DOE is required to comply with the National Historic Preservation Act (NHPA). In 1998, USDOE transferred the 1100 area to the Port of Benton. The August 1998 Environmental Assessment (EA) developed for this transfer required that a Memorandum of Agreement (MOA) would be developed between USDOE and the

Washington State Historic Preservation Office that "provides a plan for the preservation and enhancement of cultural and historic resources within the Hanford district." EA, page 5-1. USDOE and Washington State have not entered into this MOA. The Hanford Cultural Resources Management Plan states that the 1100 Area transferred will be "managed by the Port of Benton according to the NHPA requirements following the land ownership transfer." HCRMP, page 3-39. The lands are not now subject to those NHPA requirements. In the transfer documents, the Port of Benton agreed to "jointly execute [with USDOE] a [MOU] with the Washington . . . Office of Archaeology and Historic Preservation that will address cultural resource issues with the Real Property and Railroad." Indenture, page 10. This MOU was never executed.

Unless and until the USDOE finishes their obligations to comply with the NHPA for the 1100 Area transfer to the Port of Benton, this transfer is incomplete and in violation of the NHPA. Attached are two letters sent by the CTUIR Cultural Resources Protection Program regarding the problems of the 1100 Area Transfer.

The CTUIR requests the USDOE follow through with their commitments to comply with the NHPA for the 1100 Area transfer with Port of Benton including an MOA to provide protection of those lands. Further, until the Port of Benton agrees to manage the 1100 Area lands consistent with the NHPA, no additional lands should be transferred to the Port.

5. Trusteeship standing

CTUIR is one of the Trustees of Hanford natural resources, along with two states, two other tribes, and the US government. All are co-equal. Natural resource trustees have a non-discretionary legal responsibility to make the public whole for injury to natural resources, through restoration of natural resources and the ecological and human services they provide. The natural resource damage assessment and restoration (NRDAR) process is ongoing at Hanford, and includes the area in question. USDOE does not have decision-making authority within the NRDA process, the Natural Resource Trustee Council as a whole does. USDOE cannot undertake an action that could destroy the very natural resources that are being evaluated until the NRDAR process is much further along.

The Hanford nuclear reservation natural resources include one of the last contiguous desert shrub steppe habitats within the Columbia Plateau, long stretches of riparian and aquatic resources, and unique landscapes and visual resources. The Hanford site supports a diverse ecosystem that nurtures a wide range of insect, plant, and animal species, many of which are culturally significant. The site is botanically and biologically diverse, containing several hundred species of plants, including threatened and endangered plants and invertebrates not known to be found anywhere else, and many species important to CTUIR as First Foods or cultural keystone species.

The CTUIR reminds USDOE that it must fulfill its trusteeship obligations during any response to requests for property. CTUIR also reminds USDOE that there are other natural resource trustees whose responsibilities and obligations must also be upheld; USDOE should not take actions that conflict with other trustees; in particular USDOE cannot give away lands currently undergoing NRDAR injury assessment.

6. NEPA and the Requirement for Replacement

CTUIR reminds USDOE that the NEPA process cannot supersede treaty rights or natural resource trusteeship. The Comprehensive Land Use Plan (CLUP) EIS is not the "law of the land," treaties are. The CTUIR has long disagreed with the CLUP's preferred alternative, and the USEPA does not use it as a decision document in the cleanup process. Merely having a CLUP does not allow USDOE to give itself the right to ignore other ARARs such as treaties and trusteeship.

Additionally, the CLUP was poorly done and did not properly evaluate the environmental consequences, cumulative impacts, or environmental justice. For example, the CLUP EIS concluded that even though a huge borrow area was proposed within a Traditional Cultural Property at Hanford, there would be no disproportionate impact to tribes, which is ludicrous. We would refer USDOE to the draft Greater Than Class C EIS (GTCC) and the tribal narratives that explain how environmental consequences need to be evaluated. The next step in the GTCC process will be to actually re-do the analyses incorporating tribal methods for inclusion in the final EIS. In fact, the CTUIR believes that tribal methodology would make a significant difference in the outcome of the CLUP EIS, and thus is a ground for re-opening the CLUP EIS.

Although not a lease or transfer of land out of federal ownership, lands on the SE boundary of the Hanford Site were transferred from USDOE-RI to USDOE-PNSO and set a bad precedent for loss of habitat, over the objections of the Natural Resource Trustee Council. USDOE ignored the requirement to replace or mitigate lost habitat, ignored natural resource concerns, ignored the biological survey performed by the CTUIR, broke its promise to xeriscape the facility, and generally steamrolled over CTUIR and the other trustees. USDOE claimed that the NEPA document that it wrote for itself allowed this to occur, essentially granting itself a waiver from environmental protection goals.

The CTUIR believes that a full EIS is required for the parcel now in question, as well as for the larger area that is or will be requested by local entities. The importance of the natural and cultural resources, as well as the adverse and disproportionate impacts to CTUIR and the other tribes, means that an EA will not be sufficient. Previous small parcels in the same area (HAMMER and NUTTEC) proceeded with no mitigation and no consultation; in fact the NEPA documentation may not exist at all.

The CTUIR requests a full Transfer EIS be done, incorporating tribal narratives, and using tribal methods to evaluate consequences. The CTUIR further requests that the CLUP be re-opened, this time using tribal methods and considering tribal uses and trusteeship, and considering the future of the Hanford contamination.

7. Sampling and characterization

There is at least one hazardous waste landfill within the apparent land request area, the Horn Rapids Landfill (operable unit 1100-EM-1).

- A spill or dump of bis(2-ethylhexyl)phthalate resulted in soil concentrations up to 25,000 mg/kg. The Landfill was used for disposal of office and construction waste, asbestos, sewage sludge, and fly ash. Asbestos-containing debris was found throughout the Landfill, as well as a localized area of soil contaminated with PCBs up to 100 mg/kg.
- Groundwater in the vicinity of the Landfill was found to be contaminated with trichloroethene and nitrate above MCLs. The source is unclear. A groundwater monitoring program will continue until contaminant levels allowed for unlimited use and unrestricted exposure.
- The Landfill was closed as an Asbestos Landfill in accordance with the Asbestos NESHAP (40 CFR 61.151) to prevent exposure to asbestos-containing dusts.
- Institutional controls (ICs) were implemented for the Landfill and the groundwater. USDOE controlled access and use of the site for the duration of the cleanup, including enforcement of restrictions on the drilling of new groundwater wells in the plume or its path until the Remedial Action Objectives were attained. In addition, USDOE recorded a deed notation.

The Record of Decision for this OU requires that

“DOE will provide notice to EPA and Ecology at least six months prior to any transfer, sale, or lease of the Landfill property so that EPA and Ecology can be involved in discussions to ensure that appropriate provisions are included in the transfer terms or conveyance documents to maintain effective institutional controls. For example, if the Landfill is transferred to a private entity, one such mechanism may be a restrictive covenant under the Washington Uniform Environmental Covenant Act. If it is not possible for USDOE to notify EPA and Ecology at least six months prior to any transfer or sale, then the USDOE will notify EPA and Ecology as soon as possible but no later than 60 days prior to the transfer or sale of any property subject to institutional controls. In addition to the land transfer notice and discussion provisions above, the USDOE further agrees to provide EPA and Ecology with similar notice, within the same time frames, as to federal-to-federal transfer of property. USDOE shall provide a copy of executed deed or transfer assembly to EPA and Ecology.”

To the best of our knowledge, none of the above has occurred. If the transfer proceeds, the CTUIR needs to be a party to the discussions.

The Horn Rapids landfill is the subject of a NRTC tolling agreement. The NRTC has evaluated the contamination and potential for contamination of biological resources at the landfill. The landfill has contaminated the groundwater. There is a possibility of vapor intrusion into buildings if they are built. In short, there are concerns about contamination and risk at the landfill, and what would happen if development were proposed on top of the landfill.

The CTUIR needs to be included in the development of sampling plans, surveys, and discussions.

8. Survey of botanical and other environmental resources

The CTUIR will start botanical surveys in the area being requested. Currently the CTUIR is doing this in the adjacent parcel that is earlier in the sequence of Hanford segments where DOE says work is or will be completed.

9. Utilities to support major new development

The CTUIR does not believe that water-intensive development (including industrial use as well as landscaping) is possible in this area. Whether new wells would be drilled or water purchased from the city of Richland, water use is a growing concern. Electric power is also a concern, since the output of Energy Northwest is already allocated and the future vitrification plant will need vast amounts of new power that are not presently available.

Statements have been made locally that Cascade Natural Gas will be tunneling under the Columbia River and across Hanford to the 200 Area where the vitrification plant is being built. We have never heard any mention of a NEPA process. Again, rumors are swirling around, with little hard facts and no useful information coming from USDOE. While some of this is probably procurement-sensitive or business-sensitive, more frank discussion is needed.

10. Trustee principles and Endstates

The importance of Hanford and its resources to the heritage and sovereignty of the CTUIR leads to the CTUIR endstate vision for Hanford (including the Hanford Reach National Monument) as an intact site that is CLEAN, RESTORED, PROTECTED, and ACCESSIBLE. In order to effectuate this vision, the CTUIR also has a CAPACITY-building goal so that future generations of tribal scientists have the proper training to become long-term stewards of Hanford and its natural and cultural resources.

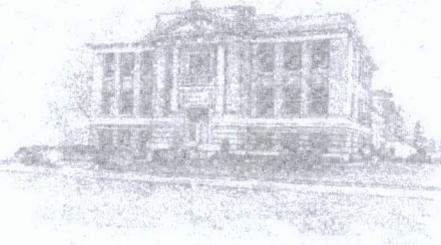
One of the endstate principles identified by CTUIR and other trustees is that new development should occur on previously-disturbed areas, not on undeveloped land. In concordance with USEPA's principle on reuse of Brownfields as energy parks, the CTUIR would be much more amenable to discussing the NPL 300 Area (east of Stevens Blvd.) as a much more suitable area for redevelopment. Hanford is not one large brownfield; only the small 300 Area is. The only other industrial area at Hanford is within the 200 Area, as USDOE has stated on innumerable occasions. Thus, industrial development elsewhere on the Hanford site should be precluded.

The CTUIR is also moving toward an increased role as a supplier of green energy to USDOE. USDOE is not taking this seriously, despite mandates from USDOE Headquarters.

The CTUIR requests a more reasoned discussion of energy parks and/or industrial development, purchase of tribal renewable energy, and how USDOE can approach future land use without further harming tribal uses and resources. The CTUIR does not believe that this occurred during development of the CLUP EIS.

Leo Bowman
District 1
Shon Small
District 2
James Beaver
District 3

Board of County Commissioners BENTON COUNTY



David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

30 October 2012

Paula Call, NEPA Document Manager
United States Department of Energy – Richland Operations Office
Post Office Box 550 – MSIN A2-15
Richland, Washington 99352

Re: Proposed Conveyance of Land at the Hanford Site – Environment Assessment

Dear Ms. Call,

Benton County is aware that the Department of Energy (DOE) has recently concluded a preliminary scoping period as part of National Environmental Policy Act (NEPA) requirements related to lands transfer proposal that Benton County is a party to. We would like to reaffirm our support for that process and offer some additional thoughts.

Benton County is a part of the team that also includes our partners from the City of Richland and Port of Benton, and is led by our designated “community reuse organization” – the Tri-City Development Council (TRIDEC). We are requesting the transfer of 1,641 acres of the Hanford Site out of DOE ownership for purposes of private sector development. These would likely be large-scale research or industrial uses, such as an “energy park”, for example.

Benton County was a cooperating agency with DOE in the development of the Comprehensive Land Use Plan (CLUP) during the 1990s. That landmark collaborative venture identified the southeastern corner of the Hanford Site as the most suitable location for future research and industrial development. We believe it is time for the community to start bringing these plans to fruition as our region migrates away from a dependence on Cold War era Hanford missions. The community’s transfer request now under consideration represents less than 3% of the land identified in the CLUP for future industrial development.

Such land transfers are not without precedent at Hanford. The community has a long history of putting land transferred out of DOE ownership to productive use. Since the 1960s, approximately 10,000 acres of former Hanford Site properties have been transferred to the City and the Port, who have collectively invested more than \$20 million in infrastructure. These transfers and subsequent improvements have created value-added assets that have been key in attracting large private sector operations that provide high quality jobs and become important economic and social pillars in the community.

We understand the NEPA process and the steps that you are taking to complete the Environmental Assessment at this time. We realize that the process has many steps and takes time. We appreciate the resources committed by DOE to undertake this project and our opportunity to participate in the process. We are aware that you have been working with the County's Sustainable Development Coordinator, Adam J. Fyall, and he will continue to serve as our point of contact on the project. Thank you again.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

A handwritten signature in cursive script, appearing to read "Jim Beaver", is written over a horizontal line.

Jim Beaver, Chairman

cc: City of Richland
Port of Benton
Tri-City Development Council

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RICHLAND CITY COUNCIL, MS-04

Telephone: (509) 942-7381

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P.O. Box 190 Richland, WA 99352

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October 10, 2012

Ms. Paula Call, NEPA Document Manager
US Department of Energy—Richland Operations Office
P.O. Box 550, MSIN: A2 -15
Richland, WA 99352

Dear Ms. Call:

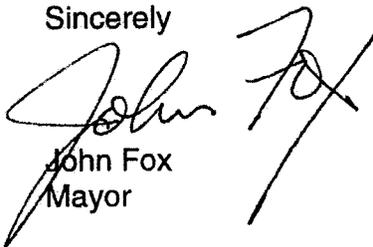
More than any other City, Richland is directly impacted by decisions about the use of the Hanford site. As stated in my May 11, 2011 letter to Matthew McCormick, the City of Richland and our other community partners (Port of Benton, and Benton County) strongly supports the request to transfer 1,641 acres at the South end of the Hanford Site to our Community Reuse Organization (CRO). The Tri-City Development Council (TRIDEC) intends to use this land for the establishment of an energy and industrial park which will help to create replacement jobs for those lost as DOE's cleanup mission is completed. The City is pleased to see the Department of Energy proceeding with an environmental assessment (EA) to evaluate any potential effects of this action. The City of Richland believes the proposed scope of the EA is appropriate and further wishes to enter the following comments into the record:

- DOE - Richland's Comprehensive Land Use Plan (CLUP) for the Hanford site designates less than 10% of the Hanford site for industrial development. The community's transfer request represents less than 3% of the land identified in the CLUP for future industrial development.
- The land requested is either zoned industrial use within the City of Richland's Urban Growth Area or included in Benton County's Land Use Plan. The property is highly accessible and adjacent to water, sewer and electrical infrastructure.
- The community has a long history of putting land transferred from DOE to productive use. Since the mid-1960's, approximately 10,000 acres of former Hanford land have been transferred in several parcels to the City of Richland or the Port of Benton. These two entities have invested more than \$20,000,000 in infrastructure and improvements. The economic benefits of these transfers are

- easily identified when you look at the companies that have been attracted to these transferred lands: Battelle/PNNL, AREVA, PermaFix, ATI Allvac Special Metals, Energy Northwest and many other excellent companies are located on this land.
- TRIDEC and the Mid-Columbia Energy Initiative (MCEI) have marketing plans and materials underway to market this property to new industry – green industry. MCEI is working closely with the Washington Clean Energy Leadership Council, and other state and regional energy committees to provide the opportunity for an Energy Park at Hanford.
- The land is needed to attract large employers who have the ability to invest millions and perhaps billions of dollars in new facilities. This private investment will however only happen if the property can be purchased when they are ready to move. They are not interested in leased land and will not wait a year or more to get the OK to proceed.

Thank you for this opportunity to participate in this public process. The proposed transfer is very important to the economic stability of this community. Please add the City of Richland to your contact list and keep us informed as the process proceeds. Also, Richland would be happy to provide any City data that may be helpful in completing your studies. Richland's Business and Economic Development Manager, Gary Ballew (gballew@ci.richland.wa.us - 509.942.7763) will serve as our point of contact for this project.

Sincerely



John Fox
Mayor

cc Richland City Council
Cindy Johnson, City Manager
Robert Hammond, Energy Services Director
William King, Deputy City Manager Community and Development Services
Gary Ballew, Economic Development Manager



Columbia Riverkeeper
111 3rd Street
Hood River, OR 97031
www.columbiariverkeeper.org

October 19, 2012

U.S. Department of Energy
Richland Operations Office
c/o Paula Call, NEPA Document Manager
P.O. Box 550, MSIN: A2-15
Richland, WA 99352

Submitted Via Email to: landconveyanceEA@rl.gov

RE: NEPA Scoping Comments on DOE's Proposed Land Conveyance at Hanford

U.S. Department of Energy:

Columbia Riverkeeper (Riverkeeper) submits these comments regarding the U.S. Department of Energy's (DOE) proposal to convey roughly 1,641 acres of the Hanford Site to the Tri-City Development Council (TRIDEC) for future development. *See DOE Notice of Intent to Prepare an EA for Hanford Land Disposal* (hereinafter "DOE Notice"), 77 Fed. Reg. 58,112 (Sept. 19, 2012). TRIDEC plans to develop and site a nuclear power plant and/or nuclear fuel generation operations at site. In turn, the scope of DOE's National Environmental Policy Act (NEPA) analysis for the land conveyance must include the effects of TRIDEC's planned new nuclear development.

Riverkeeper is deeply invested in clean water, strong salmon runs, and healthy communities. Our organization represents over 3,000 members in Oregon and Washington and regularly comments on decisions impacting Hanford and the Columbia River. Beyond the scoping process, Riverkeeper opposes the proposed land conveyance because of the environmental impacts that would result, and because the conveyance is essentially a give-away of public land to private corporations. Hanford is the focus of intense, publicly-funded clean-up efforts that will continue for the foreseeable future. Conveying these lands to private industry for less than fair market value is not in the public interest.

More broadly, Riverkeeper supports a ‘clean-up first’ approach at Hanford to protect the Columbia River and the economic and ecological health of downstream communities. Hanford is widely recognized as the most contaminated site in the Western Hemisphere, and radioactive pollution is actively leaching into the Columbia River. Cleaning up Hanford’s radioactive legacy is a monumental task, and only about one-third complete. Until the entire Hanford Site is clean and safe, DOE should not engage in side-projects that detract from DOE’s conservation and restoration mandate.

I. DOE’s proposed land conveyance could lead to new nuclear development.

TRIDEC intends to attract and site a nuclear power plant and/or nuclear fuel generation facilities on the land that DOE would convey. TRIDEC’s request that DOE convey 1,641 acres at the Hanford Site pursuant to 10 C.F.R. § 770 (hereinafter the “Proposal” or “TRIDEC’s Proposal”) explains that TRIDEC would develop an “Energy Park”¹ on the land. *Proposal* at 5. While the Proposal is somewhat vague, TRIDEC is actively recruiting *at least* one nuclear facility for the Energy Park. TRIDEC is courting AREVA Corporation to construct a “\$2.5 billion gas centrifuge plant” in the Energy Park. *Proposal* at 6. As DOE is almost certainly aware, a ‘gas centrifuge plant’ is a Uranium enrichment facility—meaning that AREVA would be refining and generating new nuclear material. TRIDEC also claims to be recruiting “a foreign clean energy manufacturer” for the Energy Park. *Proposal* at 6. Riverkeeper is concerned that “clean energy manufacturer” means ‘nuclear power plant;’ especially because TRIDEC’s Proposal differentiates between “clean energy” and “renewable energy” such as solar and bio-fuels. *See Proposal* at 6. Though the Proposal could be more explicit, it demonstrates TRIDEC’s intent to locate nuclear enrichment and/or nuclear power generation facilities on the land DOE would convey.

Even if TRIDEC’s plans for new nuclear development were uncertain, NEPA compels DOE find out exactly how TRIDEC would use the conveyed land. The Ninth Circuit long ago explained that NEPA imposes “an affirmative duty” on a federal agency disposing of land “to receive assurances of the plans of the private developer prior to the [conveyance].” *Nat’l Forest*

¹ *See also* http://tridec.org/energy_initiative/energy_park/, TRIDEC’s web page discussing plans for an energy park at Hanford.

Preservation Group v. Butz, 485 F.2d 408, 412 (9th Cir. 1973). In short, “ignorance” by a federal agency of “the plans the private party may have for the land” will not excuse NEPA compliance. *Id.* Thus, if DOE feels that TRIDEC’s Proposal does not explain whether the land at issue would be used for new nuclear development, DOE has an affirmative duty to seek clarification and assurances from TRIDEC.

Additionally, 10 C.F.R. § 770.7(a)(1)(ii), which governs DOE land transfers, requires TRIDEC to explain the “intended use” of the real property to be transferred. TRIDEC’s explanation of how the land would be used is unacceptably vague, and states only that the use would be “industrial.” *Proposal* at 4, 5. To comply with 10 C.F.R. § 770.7(a)(1)(ii), DOE must seek further information on how TRIDEC and/or its partners would use the land.

II. DOE must analyze the environmental impacts of new nuclear facilities and other industrial development.

As DOE acknowledges, any NEPA analysis of the proposed land conveyance must discuss the environmental effects of “the probable future uses of [the] lands. . . .” *DOE Notice*, 77 Fed. Reg. 58,112. When a federal agency conveys land to a private party, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) for that action must analyze the environmental impacts of any resulting private development on the conveyed land. *See Nat’l Forest Preservation Group v. Butz*, 485 F.2d at 411–12; *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 623 F.3d 633, 645–46 (9th Cir. 2010); *W. Land Exch. Project v. U.S. Bureau of Land Mgmt.*, 315 F.Supp.2d 1068, 1088–90, 1094 (D. Nev. 2004). To comply with this mandate, DOE must assess how TRIDEC’s proposed development—especially new nuclear facilities—would impact the human environment. Additionally, DOE’s EA or EIS must analyze the direct, indirect, and cumulative impacts of the proposed action (*i.e.*, conveying 1,641 acres) *and* the “several” additional conveyances that TRIDEC will request in the future. *Proposal* at Cover Letter from Carl Adrian.

The large-scale industrial development that TRIDEC proposes would have extensive environmental impacts. New industrial development near the Hanford Reach and the Tri-Cities would result in noise, light, and air pollution, and increased stormwater discharges to the Columbia. DOE must analyze how these additional sources of pollution would impact the local

environment and public health. Additionally, many industries (like the proposed solar and bio-fuels power plants) consume large amounts of water or use water to cool their facilities. Where would such water come from and where would it be discharged? Conveying the land to private corporations would also make future clean-up of this area more difficult. For example, DOE's decision to convey land would siphon agency resources away from Hanford's urgent clean-up mission.

TRIDEC's Proposal calls for an Industrial Development and Energy Park, and specifically states that TRIDEC is trying to attract new nuclear facilities (as explained above), as well as solar and bio-fuels power plants. *Proposal* at 6. DOE's Notice, though proposing to analyze the "reasonably foreseeable" impacts of development, states that DOE will analyze the impacts of "warehousing and distribution; research and development; technology manufacturing; food processing and agriculture; and 'back office' (i.e., business services)." *DOE Notice*, 77 Fed. Reg. 58,112. DOE is apparently pulling this list from a report by one of TRIDEC's consultants suggesting potential development opportunities. *See Proposal*, Attachment 7. DOE must analyze the impacts of the development that TRIDEC is *actually* proposing: new nuclear facilities and other power generation, in addition to other uses.

a. New nuclear development is an indirect impact of the land conveyance.

The environmental impact of TRIDEC's proposed nuclear development would be an "indirect" impact of DOE's land conveyance, within the meaning of the NEPA regulations. *See* 40 C.F.R. § 1508.25(c)(2). Thus, DOE's EA or EIS must analyze the environmental impacts of TRIDEC's proposed nuclear facilities. "Indirect" impacts are the impacts of a proposed project that occur later in time but are still "reasonably foreseeable;" indirect impacts include "induced changes in the pattern of land use" 40 C.F.R. § 1508.8(b); *see also Save the Yaak Comm. v. Block*, 840 F.2d 714, 720 (9th Cir. 1988) (explaining that the duty to analyze indirect impacts applies in EAs as well as EISs). In *W. Land Exch. Project v. U.S. Bureau of Land Mgmt.*, the court held that the environmental impacts of private development following a conveyance of federal land were 'indirect' impacts of the conveyance for NEPA purposes. 315 F.Supp.2d at 1088-90. Accordingly, the court ordered the federal agency conveying the land to analyze the environmental effects of the resulting private development in the EIS for the land conveyance.

Id. Granting TRIDEC's request would certainly "induce[] changes in the pattern of land use" See 40 C.F.R. § 1508.8(b). Moreover, constructing new nuclear facilities is *at least* "reasonably foreseeable" given that TRIDEC is actively recruiting and planning to site such facilities on the conveyed land. *Id.*; *Proposal* at 6. New nuclear facilities would be an indirect effect of the proposed land conveyance, and their environmental impacts are therefore within the scope of DOE's NEPA analysis.

b. New nuclear development is part of the land conveyance's cumulative impact.

An EA or EIS must also analyze the cumulative impact of the proposed project. 40 C.F.R. § 1508.25(c)(3); see also *Save the Yaak Comm. v. Block*, 840 F.2d at 720. "Cumulative impact" is the environmental impact of the proposed project when added to the impacts of "other past, present, and *reasonably foreseeable future actions*," even if a federal agency is not involved in those other actions. 40 C.F.R. § 1508.7 (emphasis added). In *W. Land Exch. Project v. U.S. Bureau of Land Mgmt.*, the court held that private development following a federal land conveyance was a reasonable foreseeable future action, and therefore part of the conveyance's cumulative impact. 315 F.Supp.2d at 1088-90. Constructing new nuclear facilities on the land DOE would convey is similarly a 'future action,' even if DOE has no jurisdiction over the construction after it conveys the land. Additionally, the construction of nuclear facilities is 'reasonably foreseeable' because TRIDEC is actively trying to locate new nuclear development at the site. See *Proposal* at 6. Pursuant to 40 C.F.R. § 1508.25(c)(3), DOE's EA or EIS must therefore analyze the environmental impacts of the new nuclear facilities TRIDEC proposes.

III. DOE cannot satisfy NEPA for the proposed land conveyance by tiering to the EIS for the Hanford Comprehensive Land Use Plan.

DOE should not tier to the outdated Hanford Comprehensive Land-Use Plan Environmental Impact Statement (HCP EIS). DOE issued the HCP EIS and Record of Decision in 1999. 64 Fed. Reg. 61,615 (Nov. 12, 1999). Together, the Record of Decision and the HCP EIS form the Hanford Comprehensive Land Use Plan, which is essentially a zoning plan for the Hanford Site. *ROD* at 2. The HCP EIS did not analyze land disposal or conveyance because "[l]and transfer is a complicated and separate process from the [Hanford Comprehensive Land Use Plan]" *HCP EIS* at 1-3. DOE, therefore, cannot tier to the HCP EIS because the HCP

EIS acknowledges that land conveyances are outside its analysis. Even tiering to the HCP EIS for background information on Hanford is inappropriate because the HCP EIS is over a decade old. In short, DOE cannot use tiering to address the impacts of conveying land to TRIDEC because the HCP EIS did not analyze land transfer, let alone TRIDEC's proposed uses of the land. *HCP EIS* at 1-3; *see also* 40 C.F.R. § 1502.20 (NEPA regulations discussing tiering).

IV. DOE must prepare an EIS to analyze the impacts of conveying land at Hanford.

DOE's proposed land conveyance is a major federal action with significant environmental impacts, necessitating an EIS. NEPA requires an EIS whenever substantial questions exist about whether a project may significantly degrade the environment. *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1239 (9th Cir. 2005); *see also* 42 U.S.C. § 4332(2)(C). The Ninth Circuit has explained that "[t]his is a low standard." *Cal. Wilderness Coal. v. U.S.*, 631 F.3d 1072, 1097 (9th Cir. 2011). Given the large amount of land DOE would convey, and the potential for extreme environmental harm associated with nuclear development, DOE's proposal is a major federal action for which DOE must prepare an EIS. Federal agencies have prepared EISs to analyze the impacts of land transfers that are relatively minor compared to TRIDEC's request. For instance, the U.S. Army used an EIS to study the impacts of selling the 78-acre Stratford Army Engine Plant. *Town of Stratford v. Federal Aviation Admin.*, 285 F.3d 84, 87 (D.C. Cir. 2002). Similarly, the U.S. Navy completed an Environmental Impact Statement to lease and develop office space on federal land in downtown San Diego. *San Diego Navy Broadway Complex Coalition v. U.S. Dept. of Def.*, No. 11cv0154 JM(WMc), 2012 U.S. Dist. LEXIS 149520, at *4-*5 (S.D. Cal. Oct. 17, 2012). The threshold for preparing an EIS is "low." *Cal. Wilderness Coal. v. U.S.*, 631 F.3d at 1097. The prospect of new nuclear generation and/or enrichment facilities along the Columbia River clearly raises "substantial questions" as to whether the DOE's conveyance "may" significantly degrade the environment. *Cf. Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d at 1239. DOE must prepare an EIS.

The NEPA regulations list ten factors for evaluating whether a project's impacts—including indirect and cumulative impacts—may be significant, requiring an EIS. 40 C.F.R. §

1508.27(b). The presence of just one of these factors can necessitate an EIS. *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2005). The factors include:

- The degree to which the project affects public health or safety.
- The degree to which the project's possible effects involve unique risks.
- The project's proximity to ecologically critical areas.
- The degree to which the project may affect endangered species or critical habitat.

40 C.F.R. §§ 1508.27(b)(2), (3), (5) & (9). The above intensity factors would apply to the construction of new nuclear facilities at Hanford.

The proposed land conveyance's impacts, including new nuclear development, are 'significant' because they involve unique risks and have the potential to endanger public health and safety. *See* 40 C.F.R. §§ 1508.27(b)(2) & (5). Hanford's toxic legacy and the recent Fukushima nuclear disaster in Japan demonstrate that nuclear technology is uniquely and inherently risky and poses grave threats to public safety. Lack of a meaningful plan for disposing of the incredibly dangerous and long-lived nuclear material that TRIDEC's facilities would generate further compounds these risks. TRIDEC's proposal poses unique and serious risks for the local community and everyone who lives downstream and downwind of the Hanford site. Pursuant to 40 C.F.R. §§ 1508.27(b)(2) & (5), DOE must prepare an EIS.

The impact of DOE's proposal is also 'significant' because the Hanford Reach, adjacent to the conveyance, is an ecologically critical area that supports endangered salmon and steelhead. *See* 40 C.F.R. §§ 1508.27(b)(3) & (9). The Hanford Reach is the last free flowing, non-tidal stretch of the Columbia River. *Presidential Proclamation establishing the Hanford Reach National Monument*, Proc. 7319 (June 9, 2000). The Hanford Reach contains some of the most productive salmon spawning habitat in the Northwest, and approximately 80 percent of Upper-Columbia River Fall Chinook spawn there. *Id.* Additionally, endangered Upper-Columbia River Spring-run Chinook and threatened Upper-Columbia River Steelhead inhabit the Hanford Reach

adjacent to the proposed land conveyance.² The Hanford Reach is designated critical habitat for these listed species.³ The potential impacts of more than a thousand acres of new industrial development next to the Hanford Reach range from nuclear contamination to increased stormwater discharge into the Columbia. Such impacts would disrupt the unique ecological qualities of the Hanford Reach and harm endangered salmonids and their critical habitat. Accordingly, DOE should prepare an EIS pursuant to 40 C.F.R. §§ 1508.27(b)(3) & (9).

V. DOE must consult with NMFS and USFWS regarding impacts to threatened and endangered species and designated critical habitat.

DOE must comply with Section 7(a)(2) of the Endangered Species Act (ESA) because threatened and endangered species and critical habitat may be present in the action area. The action area for ESA purposes includes “all areas to be affected directly *or indirectly* by the Federal action and *not merely the immediate area involved in the action.*” 50 C.F.R. § 402.02 (emphasis added). The Hanford Reach, adjacent to TRIDEC’s proposed Industrial and Energy Park, contains ESA-listed salmonids and designated critical habitat.⁴ The Hanford Reach is within the ESA action area because TRIDEC’s proposed industrial and nuclear development would very likely impact the Columbia River. Accordingly, DOE should initiate Section 7 consultation by complying with 50 C.F.R. §§ 402.12(c) & (d).

V. Conclusion

Riverkeeper is deeply concerned by the prospect of new nuclear facilities at the Hanford Site and opposes DOE’s proposal to give away public land that the public is paying to restore. Until the Hanford Site is clean and safe, side-projects like the proposed land conveyance only detract from DOE’s critical clean-up mission. DOE should put all available resources toward eliminating the radioactive and toxic threat to the Pacific Northwest’s people and the Columbia

² NMFS Decision maintaining Upper Columbia River Spring-run Chinook Endangered status, 70 Fed. Reg. 37,160, 37,163 (June 28, 2005); NMFS Decision Listing Upper Columbia River Steelhead as Threatened, 71 Fed. Reg. 834 (Jan. 5, 2006).

³ NMFS Critical Habitat Designation for 12 Evolutionarily Significant Units of West Coast Salmon and Steelhead, 70 Fed. Reg. 52,630, 52,733, 52,760 (Sept. 2, 2005).

⁴ 70 Fed. Reg. 37,160, 37,163; 71 Fed. Reg. 834; 70 Fed. Reg. 52,630, 52,733, 52,760.

River ecosystem. Riverkeeper will continue to participate in DOE's NEPA process and other administrative decisions related to the proposed land conveyance.

Sincerely,

Miles Johnson
Clean Water Attorney, Columbia Riverkeeper



Oregon

John A. Kitzhaber, M.D., Governor



OREGON
DEPARTMENT OF
ENERGY

625 Marion St. NE
Salem, OR 97301-3737

Phone: (503) 378-4040

Toll Free: 1-800-221-8035

FAX: (503) 373-7806

www.Oregon.gov/ENERGY

October 18, 2012

Paula Call
NEPA Document Manager
U.S. Department of Energy, Richland Operations Office
PO Box 550, MSIN A2-15
Richland, WA 99352

Dear Ms. Call:

Thank you for the opportunity to offer comments on the U.S. Department of Energy's (DOE) Notice of Intent to prepare an Environmental Assessment for the proposed conveyance of Hanford land. For the most part, the State of Oregon does not intend to insert itself in discussions about future use of Hanford land. However, in this instance, there are several issues which we believe should be considered as DOE moves forward with its Environmental Assessment.

Under federal law, DOE appears to have considerable latitude in terms of the conditions on which it may transfer, lease or sell its land for economic development use. 10 CFR 770.8 states that DOE "generally attempts to obtain fair market value for real property transferred for economic development, but DOE may agree to sell or lease such property for less than fair market value..."

It is our understanding that DOE does not have Congressional authority to lease or sell the land and use the proceeds from that action for Hanford Site cleanup. Given the need for additional cleanup funding, that would seem the most logical method in which to proceed.

We strongly encourage that DOE explore methods (through the Environmental Assessment or through other means, as necessary) to gain that authority, and then proceed with a process of land conveyance (selling or leasing the land at fair market value) which can best benefit the Hanford cleanup. We simply do not see how the public interest is served by giving the land away.

Secondly, as a Natural Resource Trustee, although habitat quality of the lands under consideration is not particularly high, there may be threatened or endangered bird species using these or adjacent lands that could be adversely affected by development. The

Environmental Assessment should look in detail at habitat utilization and potential adverse consequences of both land conveyance and the development that would follow.

Furthermore, since development would likely occur independently for several parcels of land, mitigation would consequently be piecemeal and of limited effectiveness. Accordingly, we urge that mitigation be planned and implemented as one action for the entire parcel, regardless of when and in how many pieces the land is eventually developed. Any transfer of Hanford land from DOE, or development of land if ownership is retained by DOE, incrementally limits future options for DOE to conduct restoration actions to offset NRDA liability. We urge DOE to carefully consider those limitations prior to any transfer of ownership or any development of the subject lands.

Finally, considerable contamination resides in the soil and in the groundwater adjacent to lands that are proposed for transfer (in the 300 Area and adjacent to the 300 Area). Further, much of the contamination is potentially down-gradient from land that could be transferred. There may also be contamination as well in some of the lands proposed for transfer. We strongly encourage that as DOE moves forward with this process, that it restricts land use that would require irrigation, including the installation of lawns, as that water could remobilize contaminants in the soil and move them towards and into the Columbia River.

If you have any questions about our comments, please contact me at 503-378-4906.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Niles". The signature is fluid and cursive, with the first name "Ken" being more prominent than the last name "Niles".

Ken Niles, Administrator
Nuclear Safety Division



November 7, 2012

Ms. Paula Call, NEPA Document Manager
US Department of Energy – Richland Operations Office
P. O. Box 550, MSIN: A2 -15
Richland, WA 99352

Dear Ms. Call,

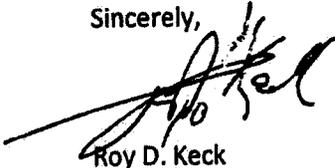
The Port of Benton and our other community partners (City of Richland, and Benton County) strongly support the request to transfer 1641 acres at the South end of the Hanford Site via our Community Reuse Organization (CRO). The Tri-City Development Council (TRIDEC) and the partners intend to use this land for the establishment of an energy and industrial park which will help to create replacement jobs for those lost as DOE's cleanup mission is completed. The Port is pleased to see the Department of Energy proceeding with an environmental assessment (EA) to evaluate any potential effects of this action. The Port believes the proposed scope of the EA is appropriate and further wishes to enter the following comments into the record:

- DOE - Richland's Comprehensive Land Use Plan (CLUP) for the Hanford site designates less than 10 % of the Hanford site for industrial development. The community's transfer request represents less than 3% of the land identified in the CLUP for future industrial development.
- The land requested is either zoned industrial use within the City of Richland's Urban Growth Boundary or included in Benton County's Land Use Plan. The property is highly accessible and adjacent to water, sewer, electrical infrastructure.
- The community has a long history of putting land transferred from DOE to productive use. Since the mid-1960's some 10,000 acres of former Hanford land have been transferred, in several parcels, to the City of Richland or the Port of Benton. These two entities have invested more than \$20,000,000 in infrastructure and improvements. The economic benefits of these transfers are easily identified when you look at the companies that have been attracted to these transferred lands: Energy Solutions, Richland Specialty Extrusion, Intermech, and many other excellent companies are located on this land.
- TRIDEC and the Mid-Columbia Energy Initiative (MCEI) have marketing plans and materials underway to market this property to new industry. MCEI is working closely with the Washington Clean Energy Leadership Council, and other state and regional energy committees to provide the opportunity for an Energy Park at Hanford.

- The land is necessary to attract large employers who have the ability to invest new facilities and create jobs. This private investment will however only happen if the property can be developed when they are ready to move. They are not interested in DOE leased land and will not wait a year or more to get the OK to proceed.

Thank you for this opportunity to participate in this public process. The proposed transfer is very important to the economic stability and diversification efforts of this community. Please add the Port of Benton to your contact list and keep us informed as the process proceeds.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Keck', written over a horizontal line.

Roy D. Keck

President, Port of Benton Commission

Cc Port of Benton Commission and Counsel
Scott D. Keller, PPM Executive Director

WPSR.txt

(b)(6) From: johnson [redacted] on behalf of Charles K. Johnson
[chuck@oregonpsr.org]
Sent: Friday, October 19, 2012 12:57 PM
To: ^Land Conveyance EA
Subject: Scoping Period for the Environmental Assessment for the Proposed
Conveyance of Land at the Hanford Site

October 19, 2012

Ms. Paula Call,
NEPA Document Manager
US Department of Energy - Richland Operations Office PO Box 550 MSIN A2-15
Richland, WA 99352 By Email: landconveyanceEA@rl.doe.gov

Dear Ms. Call,

On behalf of the Oregon and Washington Chapters of Physicians for Social
Responsibility, I make the following brief comments with regard to the
proposed conveyance of land for industrial purposes at the Hanford site:

1) Conveyance should prohibit future activities within the lands conveyed from
adding further burden of radioactive or chemical waste to the Hanford site -
this is in accordance with the intention and spirit of the Tri-Party
agreement, which designates Hanford as a cleanup site, not a production site,
with regard to radioactive or chemical materials. A nuclear power plant or
plants would significantly add to the immediate and long-term waste burden of
an already overburdened site and should, therefore, be off the table.

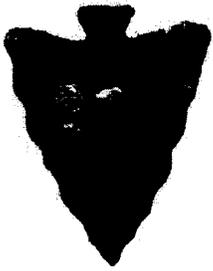
2) Conveyance should require full regulation by the Washington State
Department of Ecology under separate and new permitting and a full set of
state hearings as appropriate for any new facility or facilities proposed for
the newly reopened lands.

we will watch with interest the decisions of the US Department of Energy and
Tri-Dec as this conveyance proceeding goes forward and will respond to your
decisions accordingly, should we deem it necessary to do so. We have enjoyed
a good working relationship with the US DOE and those supporting economic
development in the Tri-Cities in recent years as we have focused on how best
to clean up an extremely contaminated site. It would be a major step
backwards to reopen regional conflicts over nuclear energy and the inevitable
contamination resulting from it once again and we urge you to think of that as
your weigh your decisions with regard to land conveyance.

Sincerely,

Charles K. Johnson
Director, Joint Task for on Nuclear Power Oregon & Washington Physicians for
Social Responsibility
812 SW Washington Street, Suite 1050
Portland, OR 97205
chuck@oregonpsr.org
cell [redacted]

(b)(6)



October 19, 2012

Matt McCormick
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, WA 99352

Re: Proposed Conveyance of Land at the Hanford Site

Dear Mr. McCormick:

The Yakama Nation submits the following comments and request for government-to-government consultation with the Department of Energy in response to the Notice of Intent to Prepare an Environmental Assessment for the Proposed Conveyance of Land at the Hanford Site.

As way of background, the "Manhattan" Project" was initiated by the United States as a top secret National Security Project near the Columbia at Hanford to win World War II. The residents of the area were relocated almost overnight and were restricted from visiting their homelands for several generations. To this day the Yakama people are restricted to certain areas for hunting and/or gathering their traditional foods. Furthermore our people are restricted from the most sacred spiritual sites known to us.

Once the "Manhattan Project" was completed, Hanford became the Nation's largest depository for some of the worse biological, chemical, and nuclear pollutants in the world. The "environmental racism" of pollution depositories near or on tribal lands is a well known situation in Indian Country. The Yakama Nation continues to challenge the Department of Energy with their obligation to clean our homelands to standards acceptable to us and our future generations. The Yakama Nation is very concerned for the people and natural resources exposed to the pollution from Hanford. Our water and salmon are the most sacred blessings we have been offered from this world. Hanford has spoiled our gifts and is not doing an adequate job of cleaning it up.

The Department of Energy continues to disgrace and disrespect us as a sovereign nation and as the true stewards of our homelands by not offering the Yakama Nation a "first right of refusal" on conveyance of lands associated with the Hanford Site. We do not support the land being conveyed to "TRIDEC", any other organization, or tribe associated with the area. The benefits from the "Manhattan Project" and the depository have been realized by the world and especially the United States at the expense of the Yakama people and their sacred resources. The Department of Energy

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needs to correct the wrongs of the past and at a minimum conduct "face to face" consultation with the Yakama Nation. As such, the Yakama Nation requests government-to-government consultation with the Department of Energy to discuss this important matter.

The Yakama Nation also has concerns on how the traditional cultural property (TCP) study will be carried out. Generally contractors do not consult directly with Tribes, rather consultation is carried out directly between the Federal agency and the Tribes. A comprehensive and good faith effort for TCP studies must include Tribal input. TCP studies must consist of interviewing tribal members familiar with the area through first-hand knowledge or oral history. Only the people who place cultural significance on an area are able to identify it and speak of its significance.

Thank you for your time and attention. Please contact Philip Rigdon, Department of Natural Resources Deputy Director to assist with arranging a government-to-government meeting. Mr. Rigdon can be reached at (509) 865-5121 x. 4655 or at prigdon@yakama.com.

Sincerely,


Harry Smitsen, Chairman
Yakama Nation Tribal Council

Cc

Warren Spencer

Sam Jim, Sr.

Phillip Rigdon

Kate Valdez

Steve Rigdon

Russell Jim

Mona Wright

Administrative Record

Vivian Babs George

Stella Washines

Tom Zeilman

Rob Whitlam

Ruth Jim

Marlene Shavehead

Paula Call

From: Bixler, James W [jim.bixler@pnnl.gov]
Sent: Friday, October 19, 2012 11:00 PM
To: ^Land Conveyance EA
Subject: Comments from PNNL regarding the proposed land transfer

The following are some general comments from PNNL regarding the EA for proposed conveyance of land at the Hanford Site. If you have any questions/comments, then please respond to this email.

Overall, PNNL favors this land transfer in that it is a positive step in the support of growth and development in the Tri-Cities. And, also we believe it will be complementary to PNNL's efforts to commercialize DOE technologies. With making this property available, technologies developed at PNNL can be readily demonstrated, manufactured, and/or implemented nearby, which will increase the likelihood of successful commercialization and serve to diversify the Tri-Cities economy in the wake of Hanford cleanup. Additionally, it would be expected that the new industries and businesses established and located on this property would be compatible with PNNL's current and future programs, work, and facilities, and to the extent any potential impacts resulted then appropriate zoning/restrictions and land use would be warranted. Again, this proposed conveyance of land action at the Hanford Site is an excellent step in right direction to enhancing growth, development, and the economy in the Tri-Cities, and in general PNNL whole-heartedly supports the proposed action. Thanks for the opportunity to provide some comments.

Thanks. Jim

Jim Bixler

Facility Strategic Planning Office
Facilities & Operations Directorate
Pacific Northwest National Laboratory
902 Battelle Boulevard
P.O. Box 999, MSIN J2-33
Richland, WA 99352 USA
Tel: 509-371-7755
Cell:
Fax: 509-371-7049
jim.bixler@pnnl.gov
www.pnnl.gov

(b)(6)

(b)(6) **From:** Chris Daub (chrisdaub [redacted])
Sent: Thursday, October 18, 2012 5:25 PM
To: ^Land Conveyance EA
Subject: Hanford

I am concerned that all precautions must be taken to protect the environment, and the public from the effects, when debating land use of the Hanford site, with all the mixed nuclear waste. Please Take Care!
Sincerely,

Mary Daub

[redacted] (b)(6)

chrisdaub [redacted] (b)(6)

From: Jeanne Raymond [raymondj@peak.org]
Sent: Monday, October 08, 2012 5:59 PM
To: ^DOE
Cc: HANFORD-INFO@LISTSERV.WA.GOV; ^Land Conveyance EA
Subject: Re: Fact Sheet for Public Scoping Period on Environmental Assessment for Proposed Conveyance of Land at the Hanford Site

Importance: High

DOE; Hanford Proposed Conveyance of Land

As one of the early concerned citizens who rallied for, and supported, legislation to clean up the Hanford Nuclear Reservation Site, I am now concerned that more nuclear industry is being proposed for land that is being considered for "Conveyance of Land". I am unconditionally opposed to any "new nuclear" technology or "new" nuclear energy plant on this land. Nuclear energy is NOT renewable, sustainable, green energy.

We who fought for the cleanup of Hanford, realized that there would be many jobs created in order to fulfill that objective. Now that the cleanup is being completed, it would be a betrayal of the trust, if it was put back into nuclear use and production. Nuclear energy is NOT green manufacturing. We considered the cleanup of Hanford analogous to forging weapons into ploughshares. I object to the transfer of this land for any nuclear manufacturing, or weapons manufacturing use. I object to the transfer of this land for any military purpose or for any nuclear energy plant production manufacturing.

Furthermore, I object to the following clause, because any hazardous substance or contaminant resulting from activities by DOE or from the city of Richland, or any corporate or individual responsible must be held accountable for that contamination.

770.7(a)(1)(v)(2)

TRIDEC *does* request indemnification against claims based on the possible release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities.

Sincerely,
Jeanne Raymond
Corvallis, Oregon

On Oct 5, 2012, at 3:23 PM, ^DOE wrote:

This is a message from the U.S. Department of Energy

Please mark your calendars to attend the upcoming public scoping meeting for the

Environmental Assessment for Proposed Conveyance of Land at the Hanford Site

October 10, 2012

5:30 p.m. – 6:30 p.m. Open House
6:30 p.m. – 8:30 p.m. Meeting
Richland Public Library
955 Northgate Drive
Richland, Washington

The U.S. Department of Energy - Richland Operation Office is preparing an Environmental Assessment to assess the potential environmental impacts of conveying approximately 1,641 acres of Hanford Site land designated for industrial uses in the *Hanford Site Comprehensive Land Use Plan*. The term “convey” means potential transfer, lease, easement or combination of such actions. We invite your input during a 30-day public scoping period from September 19 – October 19, 2012. Please join us to learn more about the project during a public scoping meeting October 10 at the Richland Public Library, 955 Northgate Drive, Richland, Washington. The meeting will include an open house from 5:30-6:30 p.m. and project overview presentation at 6:30 p.m., followed by a question-and-answer period and opportunity for individuals to give formal written or oral comments.

For more information on this proposed action, please contact Paula Call at 509-376-2048 or send an email to landconveyanceEA@rl.doe.gov

Attached is a fact sheet developed to support the public scoping period.

Below are links that will take you to the Federal Register Notice of Intent and more information about the project.

September 19, 2012 Federal Register Notice of Intent To Prepare an Environmental Assessment (EA) for the Proposed Conveyance of Land at the Hanford Site, Richland, WA
http://www.hanford.gov/files.cfm/Hanford_NOI.pdf

TRIDEC proposal
[http://tridec.org/images/uploads/770%20%20-%206_1_11%20Revised%20Final%20\(Including%20WA%20State%20Leg\)%20\(Reduced%20Size\).pdf](http://tridec.org/images/uploads/770%20%20-%206_1_11%20Revised%20Final%20(Including%20WA%20State%20Leg)%20(Reduced%20Size).pdf)

<ConveyanceEAScopingFact Sheet.pdf>

(b)(6) **From:** Karin Engstrom [redacted]
Sent: Friday, October 19, 2012 6:15 PM
To: ^Land Conveyance EA
Cc: Hanford@ecy.wa.gov; gerry@hoanw.org; kevin@hoanw.org; info@gzcenter.org
Subject: Comments on Scoping for proposed land conveyance

First, this conveyance of land has been planned for some time and I don't think any comment or observation I may have will make much difference in what has already been set in motion, but I will state my concerns and questions as a citizen of the US and state of Washington.

I've been reading many books on the area and now understand that the scientists knew the consequences of creating so much nuclear waste. I believe they realized that once set into motion, this would snowball into un-ending nuclear waste and contamination of the land, air and water. I believe that the staff members of the DOE, my state's Department of Ecology and the EPA making decisions about land conveyance must take responsibility for any harmful effects or consequences. You know the history of this land well.

1. This area has continued to be a dumping ground for other nuclear waste such as the recent FONSI by the Navy and DOE to bring the USS Enterprise nuclear reactors around the Olympic peninsula, along the Washington coast and through the Columbia corridor to Benton where they will be transported by land through to the Trench 94. From what I can see on their map, it looks as if this will be transported through the land that is being considered for conveyance. Is this the case?
2. If you are really going to do a study, then a map of all the waste materials of various kinds needs to be clearly outlined and how this waste will not affect land that the DOE wants to convey to the by lease or sale. I believe there is a disclosure law in the state that requires a full report of the conditions of the property upon conveyance.
3. There are constant notices for scoping and actions regarding the storage and cleanup of the area. What is the specific use of the land that will be conveyed? Will there be restrictions and limitations of the lands?
4. What other proposed and current actions affect this area - its proximity to contamination from storage and clean up?
5. How will you protect the area from further contamination?

I will appreciate your consideration of my comments and look forward to answers of my questions.

Please place this brief letter in the record. Miracles will never cease - I am still in the date of 10/19/2012.

EVER ONWARD!

Karin Engstrom

(b)(6) [redacted signature]

To write, to make art and film, to work as a journalist or an educator can be a radical act, one that blurs the lines between action and contemplation by employing ideas as tools to make the world as well as understand it.

Rebecca Solnit Our Storied Future, ORION, January 2008

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PUBLIC SCOPING MEETING
ON THE ENVIRONMENTAL ASSESSMENT
FOR PROPOSED CONVEYANCE OF LAND
AT THE HANFORD SITE

Richland Public Library
955 Northgate Drive
Richland, Washington
5:30 p.m.

BRIDGES REPORTING & LEGAL VIDEO
Certified Shorthand Reporters
1030 North Center Parkway
Kennewick, WA 99336
(509) 735-2400 - (800) 358-2345

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PRE-MEETING COMMENTS

MR. LEAUMONT: My name is Richard Leumont,
L-e-a-u-m-o-n-t.

I think a complete biological assessment needs to be made of the area to make sure that any wildlife habitat or threatened or endangered species of plants and animals should be done before a decision is made.

I am very much opposed to giving land to TRIDEC or any other private company or agency that will give the land away. I feel that the land should be sold at fair market value and that those funds be used to purchase wildlife habitat.

This is a public asset, and if it is going to be used for private gain, then the public should have the fair market value of the property. That's all.

(Comment concluded.)

1 from the west end of Horn Rapids Road and from the Areva
2 uranium leakage they had from their ponds and the uranium
3 plumes from the 300 Area.

4 And the last comment would be I would like to
5 see the EA address the restriction on putting additional
6 water into the ground west of the 300 Area because of the
7 influence it could have on leaching more contamination from
8 the 300 Area into the Columbia River. Thank you.

9 MR. COUSINS: Thank you, Mr. Panesko.

10 The next person is Gary Ballew.

11 MR. BALLEW: Hi, I'm Gary Ballew. I'm
12 the economic development manager for the City of
13 Richland.

14 City of Richland is one of the partners with
15 TRIDEC on the request. I have a letter from our mayor,
16 who is sitting right here, but I'm going to talk through
17 him, a letter from the mayor that I'll enter into the
18 record formally.

19 In general, the City of Richland is in
20 support of the scope of the EA. We think it's
21 appropriate to answer the questions that are raised here
22 tonight. There was some questions raised during the
23 question and answer period. We certainly could answer
24 those, but I don't know that this is the venue.

25 The Port, Benton County and the City of

4

1 Richland and TRIDEC are partners on this, the three of us
2 are public agencies, and so if you have any questions, I
3 would invite folks to contact myself, Gary Ballew; Diane
4 Howard with the Port of Benton; Adam Fyall is with the
5 county, and we could answer some of those questions.

6 So I will just, in the interest of brevity,
7 just enter the letter into the record. Can I hand that
8 to somebody?

9 MR. COUSINS: Sure. Thank you, Mr.
10 Ballew. And just for the record, Ballew is B-a-l-l-e-w?

11 MR. BALLEW: Yes.

12 MR. COUSINS: The next person signed up
13 to speak is Carl Adrian.

14 MR. ADRIAN: Carl Adrian. Carl with a
15 "C," Adrian, A-d-r-i-a-n.

16 I'm President and CEO of the Tri-City
17 Development Council, locally known as TRIDEC.

18 TRIDEC is the lead economic development
19 organization for Benton and Franklin Counties, and it was
20 mentioned earlier that in DOE jargon, we're the Community
21 Reuse Organization or CRO.

22 This designation, that of CRO, is mentioned
23 specifically in both the Code of Federal Regulations,
24 770, which allow for the conveyance of real property for
25 the purposes of economic development, and it was also

5

1 specifically mentioned in Armed Services legislation that
2 was passed in 2011 that was related to energy parts,
3 which is now become asset revitalization at the
4 Department of Energy.

5 So because of the CRO references in those two
6 pieces of law, it is TRIDEC that has made the request for
7 1,641 acres of Hanford to be conveyed to the community.
8 From our perspective, there's no better example that
9 Hanford is being cleaned up than the day a small portion
10 of the 586-square mile site get transferred to the
11 community.

12 The land is, the land conveyance clearly
13 spells success, and I think we all need to celebrate that
14 success because it is an important milestone, I think,
15 for this community.

16 You know, at some point in the very near
17 future, the River Corridor will be returned to a pristine
18 condition, there won't be any further risk to the public,
19 and nearly 70 years after the land was taken from the
20 farmers, the shopkeepers, the private citizens who owned
21 the land and was put into government service at that
22 time, a small part of the Hanford site can, once again,
23 regain beneficial use.

24 We think that's important. I should point
25 out that the regulations are very clear that if the land

1 does not directly support DOE critical missions, that in
2 order to help stimulate the local economy as a result of
3 the reduction in workforce, the land must be made
4 available, so that's part of the regulations.

5 We should also recognize, you talked a little
6 bit about the CLUP earlier, the Comprehensive Land Use
7 Plan, and the federal legislation that established the
8 Hanford Reach National Monument, but as you said, more
9 than 80 percent of the 586-mile site has already been
10 identified for conservation and preservation.

11 The active clean-up footprint will eventually
12 be reduced to as little as 10-square miles at the Central
13 Plateau, so the vast majority of the site is going to be
14 preservation and conservation. As you pointed out, the
15 comprehensive land use plan also calls for a small
16 portion, 60 square miles, a little over one percent of
17 the total site, to be set aside for industrial use and
18 research and development.

19 You know, and so that is part of the property
20 that, again, you've seen on the maps is where the TRIDEC
21 request in 1,641 acres.

22 The Comprehensive Land Use Plan clearly
23 spells out what the land could be used for, but it also
24 certainly infers what it can't be used for, and I think
25 as the community, we're prepared to work within those

7

1 parameters.

2 We're not suggesting that the CLUP be changed
3 or anything like that, the parameters there, and we want
4 the community to work within those parameters.

5 There were some comments earlier about
6 TRIDEC, and maybe this will answer some of the questions.
7 But I want to be very clear about this, TRIDEC has
8 absolutely no intent to be in the land business. We've
9 already established with our partners -- the City of
10 Richland, the Port of Benton, and Benton County -- that
11 if there is no immediate user for the land, or a large
12 portion of the land, we, TRIDEC, will turn the property
13 over to our partners at whatever cost it cost us to
14 acquire the property, no additional cost.

15 Our partners have also agreed that if there
16 is an immediate user, and by user I'm referring to an
17 employer, not a developer, but an employer, that we all
18 mutually agree will have a benefit to the community and
19 add jobs to the community, TRIDEC could then transfer it
20 directly to that employer and, frankly, we could do it at
21 a reduced cost. So we think that's a positive.

22 And, again, TRIDEC has no intent to gain
23 financially with any of these transactions, so it's going
24 to be a straight across transfer, no intent to mark up
25 prices of land or anything else.

1 We should also recognize the past land
2 transfers from the federal government, either the City or
3 Port of Benton, have improved economic development value,
4 making the land available for industrial use, and since
5 the mid-1960s some 10,000 acres of land has been
6 conveyed.

7 I think only one of those conveyances was
8 actually from the Department of Energy, either from the
9 predecessor agency or the maritime administration or
10 something else, but I think there was one DOE transfer.
11 But the entities, the City and Port, have invested about
12 \$20 million dollars in infrastructure, probably \$20
13 million, plus, but the current assessed value of that
14 property is well over \$250 million dollars, so it's been
15 a good investment for the community.

16 That's what we're hoping to do, is replicate
17 what's happened already with the conveyances that's
18 already been made. We should remember that there is not,
19 if there had not been a World War II or Manhattan
20 Project, what is now Hanford and the Hanford Reach would
21 likely be under intensive agricultural use.

22 Those of you that drive from Vernita to
23 Vantage see how rich that soil is, it's in irrigated
24 agriculture up there, you see all the grapes, apples,
25 pears, alfalfa and that other stuff going on. That's

1 probably what the Hanford site would look like today,
2 absent Manhattan Project, so I think we have to keep that
3 in mind.

4 Again, our dream is simply to put some of
5 this land back to beneficial use or, as the Comprehensive
6 Land Use Plan says, the highest and best use of the land,
7 once it no longer supports direct DOE missions. So thank
8 you very much.

9 MR. COUSINS: Thank you, Mr. Adrian.

10 The next person is Dr. Steven Link.

11 MR. LINK: Yes, I have no comments to
12 make.

13 MR. COUSINS: All right, that's all we
14 have signed up in advance. Is there anyone here tonight
15 that would like to enter a comment into the record as
16 part of this portion of tonight's meeting?

17 We'll take the lady in the gray.

18 MS. HANSES: My name is Laura Hanses,
19 it's L-a-u-r-a H-a-n-s-e-s, and I live in Kennewick.

20 I also work out at the Hanford site. I would
21 like to make sure that the EA addresses the continuing
22 mission out at Hanford for 40 to 50 years, the Waste
23 Treatment Plant, the transportation issues that will be
24 happening to support that project, both for the
25 infrastructure that would be going on there, but also the

10

1 workforce.

2 When I look at that map, I see a huge bottle
3 neck that's going to be created for the Hanford
4 workforce, so I don't see that the Hanford traffic issues
5 have ever been able to get resolved. I don't see how
6 they're going to be able to be resolved without a new
7 route in place and I see that as being way bigger than
8 the City of Richland or the Port of Benton.

9 So I would like to see, I would like to see
10 the impacts to DOE's continuing mission and then also the
11 workforce.

12 MR. COUSINS: And, sir, you had, you
13 wanted to add your name?

14 MR. PLAHUTA: My name is Maynard Plahuta,
15 and I'll spell it for the 599th time. P-l-a-h-u-t-a, and
16 Maynard is M-a-y-n-a-r-d.

17 I clearly support the process of using an EA.
18 I know some think it should be an EIS, and I've known
19 Vince for a long time. We generally agree on most things
20 but sometimes we don't.

21 The reason I say that is I have enough
22 confidence that if there is a problem, as the panel has
23 said, that the EA demonstrates that you have to go
24 further, then do so, but don't spend unnecessary, in my
25 view, time and effort to go through a full EIS when an EA

11

1 may be adequate.

2 Now I'm not suggesting there be shortcuts in
3 that EA and cover things that shouldn't legitimately be
4 covered.

5 Secondly, I think it makes a whole hell of a
6 lot of sense to turn this over, whether it be a lease or
7 own or sale or whatever to get industry involved. I mean
8 we've got to look to a mission here at the site
9 eventually is going to diminish.

10 I know Laura and others says it's going to be
11 a long time, and we know it's going to be a long time,
12 but on the other hand, we shouldn't sit here idly and
13 hope everything will get continue to get federal funding
14 and all this stuff may be fine and dandy, that may be
15 true in my lifetime, but I'm thinking of my children and
16 grandchildren.

17 We really need some economic development in
18 this community, and there's no better place, I think,
19 than TRIDEC and working with the local community is going
20 to make that happen much faster and much better than
21 anybody else.

22 So I thoroughly support what the TRIDEC's
23 proposal, I think it's a real advantage for community,
24 and I would hope that everything will go smooth so that
25 we can see this happen relatively soon. Thank you.

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MR. COUSINS: Thank you.

I think I saw a third person. Sir? Anyone else that would like to provide testimony tonight?

(No response.)

If not, that concludes the formal portion of tonight's meeting. We thank you for coming.

(7:35 p.m.)



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office
Eastern Washington Field Office
11103 East Montgomery Drive
Spokane Valley, WA 99206

Ms. Paula Call, NEPA Document Manager
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, MSIN A2-15
Richland, Washington 99352.

October 19, 2012

Dear Ms. Call:

Subject: Notice of Intent to Prepare an Environmental Assessment for the Proposed Conveyance of Land at the Hanford Site, Richland, Washington and Notice of Potential Floodplain and Wetland Involvement (EA; DOE/EA-1915).

The U.S. Fish and Wildlife Service (Service) is writing in response to the subject Notice of Intent (NOI) published in the Federal Register Volume 77, No. 182, Wednesday, September 19, 2012. The Department of Energy's (DOE) proposed project involves conveying approximately 1,641 acres of Hanford Site land to a local economic development organization. Conveyance of the land could include title transfer, lease, easement, license, or a combination of these realty actions. The Tri-City Development Council (TRIDEC), a DOE designated Community Reuse Organization (CRO) and 501(c)(6) nonprofit corporation, submitted a proposal to DOE in May 2011 (amended October 2011) requesting the transfer of approximately 1,641 acres of land located in the southeastern corner of the Hanford Site near the City of Richland in Benton County, Washington for economic development purposes. The Department of Energy anticipates that there may be continuing mission needs, such as security and safety buffer zones on some of the requested lands, making them less suitable for conveyance. Therefore, the lands that will be addressed in the Environmental Assessment (EA) analysis will include the acreage requested by TRIDEC (1,641 acres) and approximately 2,772 additional acres adjacent to the requested lands for a total of 4,413 acres. The EA will evaluate the potential environmental impacts of conveying approximately 1,641 acres of the total 4,413 acres included in the analysis area. The acreage being considered in the EA analysis is part of approximately 59 square miles of Hanford Site lands previously designated by DOE for industrial uses under the Hanford Comprehensive Land-Use Plan (CLUP), based on analyses presented in the Hanford Comprehensive Land-Use Plan Environmental Impact Statement (HCP-EIS) [DOE/EIS-0222; September 1999; Record of Decision (ROD) (64 FR 61615; November 12, 1999)]. The HCP-EIS recognized the potential for future conveyance of some industrial-designated lands to the local community for economic development.

These preliminary scoping comments are made pursuant to the National Environmental Policy Act (NEPA), Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, the Endangered Species Act, and other relevant rules, regulations, and information pertinent to this project and relevant to the Hanford site.

General Comments

The Service recognizes the position that DOE is placed in trying to balance its various directives and obligations. As the designated CRO, TRIDEC has asked for assistance in balancing the potential economic loss by the reduced DOE workforce by asking for the transfer of DOE-owned real property by sale or lease at the Hanford defense nuclear facilities, for the purpose of permitting economic development as provided for in 10 CFR 770. The TRIDEC request for 1,641 acres falls within the area designated by the CLUP for industrial uses. However, DOE also has a trust responsibility for the natural resources provided by the real property it owns and/or controls. A June 9, 2000, Presidential Memo to the Secretary of Energy states that DOE should "manage the Central Area to protect these important values where practical" and directs the Secretary to "...consult with the Secretary of the Interior on how best to permanently protect these objects, including the possibility of adding lands to the monument as they are remediated."

The Service, as the current manager of the Hanford Reach National Monument, has a vested interest in the conservation, protection, and enhancement of fish, wildlife, plants and their habitats, and, as noted in the Service's "*Hanford Reach National Monument, Final Comprehensive Conservation Plan & EIS*" (2008; CCP), "has the responsibility to protect and recover threatened and endangered species; administer the Migratory Bird Treaty Act; and protect fish, wildlife and Native American and other trust resources within and beyond the boundaries of the Monument." It should be noted that public comments on the both the Service's CCP and DOE's CLUP, although varied, were overwhelmingly in favor of preservation of natural habitat. This reflects a growing recognition of the importance of shrub steppe habitat and of how much has been lost. The Service therefore encourages DOE to reduce impacts to this habitat and suggests the following to balance its priorities.

The Tri-City Development Council has requested two specific parcels of DOE owned land, Parcel 1 being 1,314 acres and Parcel 2 being 300 acres. The Department of Energy has noted in the NOI that some of the requested lands may be unsuitable for conveyance and has suggested considering a larger parcel under the EA so that there may be a total of 1,614 acres available for potential transfer to TRIDEC. The Service suggests the EA be limited to the parcels specifically requested by TRIDEC. The criteria used by TRIDEC to request specific parcels (e.g. proximity to infrastructure) may limit the usability of lands that are not in those specific areas requested by TRIDEC. Expanding the area under consideration opens up the possibility of impacts to habitat that may not otherwise be considered for development. It may also move development closer to sensitive areas, such as nesting areas for ferruginous hawks, (see for example Figure 4-17 of the CLUP). It seems prudent to allow TRIDEC the opportunity to adjust its development plans on the requested parcels to the potential restrictions by DOE rather than to open up areas beyond those requested by TRIDEC for additional consideration in the EA. Note that one of the purposes of NEPA is to "prevent or eliminate damage to the environment" by reducing the environmental consequences of a decision to take an action based on a need.

As noted in the NOI, the Purpose and Need is that "DOE will consider the TRIDEC request for the transfer of 1,641 acres of Hanford lands to support local economic development", not 4,413 acres as DOE is considering including in the EA.

The Service also suggests that DOE require application of its own habitat ranking and mitigation requirements detailed in its Biological Resources Management Plan (BRMaP) to the properties it conveys for development. Whether sold or leased, the same requirements that currently apply to DOE owned property should be conveyed to the lessee/owner. The Service recommends including the same requirements the DOE uses in the BRMaP in the lease/deed for conveyed property.

Endangered & Sensitive Species

The NOI did not contain site specific information on where the project activities such as building construction, road construction/reconstruction and related activities will occur. In our coordination with the DOE over the past two decades, the Service, as well as other State and Federal Entities, has identified several threatened and endangered species, candidate species, and species of special concern that are and may be present at the Hanford site. For example, several avian species were identified in the vicinity of the potential conveyance area in the CLUP (e.g. Figure 4-17) that could potentially be impacted by development. Bull trout and designated critical habitat for the bull trout also occur in the area, and there are also numerous other species, including anadromous fishes that have been federally listed by the National Marine Fisheries Service, that may occur in the vicinity of and be affected by this proposed project on the site. For the preparation of the EA, and Biological Assessment (BA) that specifically evaluates the effects of the project on listed species, the current county list(s) of threatened and endangered species under the purview of the Service can be found at <http://www.fws.gov/easternwashington/species/countySppLists.html>.

Should the BA for the proposed project determine that a listed species under the jurisdiction of the Service is likely to be affected (adversely or beneficially) by the project, DOE should request Section 7 consultation through the Service. If the BA determines that the proposed action is "not likely to adversely affect" a listed species, DOE should request Service concurrence with that determination through the informal consultation process, however if the proposed action is determined to result in adverse effects to a listed species, the DOE should request formal section 7 consultation with the Service. If the biological assessment determines that the project will have "no effect," we would appreciate receiving a copy of this determination for our records.

Migratory Birds

Efforts should be made to protect migratory birds and their habitats protected under the Migratory Bird Treaty Act in siting this project. The ongoing bird surveys at the Hanford site demonstrate that this site is visited by many species and thousands of individuals of migrant birds. Birds are generally sensitive to perturbations of their environment. Examples include, but are not limited to, maintenance of adequate buffer areas around nesting areas, such as those of the ferruginous hawk, and maintaining raptor perches, etc. Please consider impacts to migratory birds and their habitats that may be impacted by the project at the Hanford site, including those incidental to construction (e.g. bank swallows nesting in soil stockpiles).

Cumulative Effects

Under the National Environmental Policy Act (40 CFR - 1508.7), cumulative effects are the effects on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or nonfederal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. The Hanford site has extensive past impacts and is undergoing remediation and restoration to address these impacts to the environment. Therefore we recommend a comprehensive cumulative effect assessment of past, present, and future activities in the general vicinity of the project including future development in the designated industrial use area. Any analysis should include a detailed analysis of cumulative effects of the proposed project at the Hanford site and its integration with ongoing efforts for remediation, restoration, and preservation of natural resources.

Terrestrial Land Use

Although addressed in the NOI and mentioned above, you should address the consistency of the project CLUP, including the siting of the project and associated supporting infrastructure (roads, electricity, etc.), and proximity to shrub steppe habitat, known avian nesting and forage areas, and other natural resource considerations. As noted, in the response to comments to the CLUP, it is clear that preservation of the large expanses of undisturbed habitat is a high priority.

Cultural Considerations

The Hanford site is recognized as a valuable cultural resource to the surrounding Native American community through various formal and informal means. You should consider the potential impacts to the cultural resources specific to the Hanford site.

Sincerely,



KSB Ken S. Berg, Manager
Washington Fish and Wildlife Office



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OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

October 19, 2012

Paula Call
NEPA Document Manager
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, MSIN A2-15
Richland, Washington 99352

Re: EPA Scoping Comments on the Proposed Conveyance of Land at the Hanford Site and Potential Floodplain and Wetland Involvement (EPA Project: 12-0050-DOE).

Dear Ms. Call:

In accordance with our responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act (NEPA), the US Environmental Protection Agency (EPA) has reviewed the US Department of Energy (DOE) Notice of Intent (NOI) to prepare an Environmental Assessment (EA; DOE/EA-1915) for the proposed **Conveyance of Land and Potential Floodplain and Wetland Involvement** at the Hanford Site in Richland, Washington.

According to the NOI, DOE proposes to assess environmental impacts associated with actions to convey up to 1,641 acres of the Hanford Site land to Tri-City Development Council (TRIDEC), a local economic development organization. The analysis area would be 4,413 acres, which would include requested lands and surrounding parcels. The conveyance would involve title transfer, lease, easement, license, or a combination of these realty actions. In addition, TRIDEC would engage in warehousing and distribution, research and development, technology manufacturing, food processing and agriculture, and other business services. The EA tiers to the 1999 Hanford Comprehensive Land-Use Plan Environmental Impact Statement (EIS) and related 2008 amendments and Record of Decision, which included provisions to transfer lands designated for industrial use to the local community for economic development.

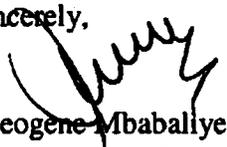
The EPA supports the goals of the proposed action to convey lands suitable for economic development to local entities and others, and analyze potential impacts of this action on environmental resources in the analysis area under NEPA. Similarly, we appreciate DOE plans to prepare an Environmental Impact Statement if the proposed EA analysis result in significant impacts. The NOI further identifies a preliminary list of resources and issues to address in the EA analysis, including, but not limited to land use, ecological and cultural resources, water and air quality, wetlands and floodplains, human health and safety, and others. We offer the attached scoping comments to inform DOE of issues that the EPA believes are important to consider in NEPA analysis for the project.

The EPA recommends DOE consider imposing deed restrictions and easements for those transfer lands having resources considered sensitive and having natural, cultural, historical and environmental

significance. Such restrictions would better assure that subsequent use of the lands by the transferee would be environmentally and socially sustainable. The EA analysis should also include criteria to identify suitable parcels to convey, state compatible and incompatible uses, and techniques to protect resources that may be at risk (e.g. shrub steppe habitat and associated species), including regulatory controls and acquisition methods (e.g. fees, easements, etc...).

Thank you for the opportunity to provide comments on this project early and we look forward to continued involvement in subsequent NEPA processes for the project. If you have questions about our comments, please contact me at (206) 553-6322 or by electronic mail at mbabaliye.theogene@epa.gov.

Sincerely,



Theogene Mbabaliye
Environmental Review and Sediment Management Unit

Detailed EPA Scoping Comments on the Proposed Conveyance of Land at Hanford Site in Richland, WA

Purpose and Need

The EA should clearly identify the purpose and need to which DOE would be responding in proposing the alternatives, including the proposed action. The purpose of the proposed action would typically be the specific objectives of the proposed action, while the need for the plan may be to eliminate a broader underlying problem or take advantage of an opportunity. Thus, the purpose and need should be a clear, objective statement of the rationale for the proposed action, as it provides the framework for identifying project alternatives.

Range of Alternatives

The EA should include a range of reasonable alternatives that meet the stated purpose and need, and that are responsive to the issues identified during the scoping process. It will also be important to quantify impacts of each alternative action and determine corresponding mitigation measures. The EPA encourages selection of feasible alternatives that would minimize environmental degradation.

Environmental Effects

The EA should include environmental effects and mitigation measures. This would involve delineation and description of the affected environment or analysis area, indication of impacted resources therein, the nature of the impacts, and mitigation measures for the impacts. The following topics are of particular interest to the EPA.

Water Resources

Water quality degradation is one of the EPA's primary concerns. Section 303(d) of the Clean Water Act (CWA) requires the State of Washington and Tribes with the EPA-approved water quality standards to identify water bodies that do not meet water quality standards and to develop water quality restoration plans to meet the state and tribal water quality criteria and associated beneficial uses. Therefore, the EA should disclose waters in the analysis area and vicinity that new land uses may impact, nature of the potential impacts, and pollutants likely to affect those waters. It should also report waters on the State's and Tribe's most current EPA-approved 303(d) list and describe any existing restoration and enhancement efforts for those waters, how new landowners would coordinate with on-going protection efforts, and any mitigation measures to implement to avoid further degradation of water quality within impaired waters. Please also note that anti-degradation provisions of the CWA prohibit degrading water quality standards within water bodies that are currently meeting water quality standards. Because of that, the EA document should indicate how development projects within conveyed lands would meet those provisions.

Public drinking water supplies and/or their source areas often exist in many watersheds. Source water areas might exist within or around the analysis area. Source water is water from streams, rivers, lakes, springs, and aquifers used as a supply of drinking water. The 1996 amendments to the Safe Drinking Water Act (SDWA) require federal agencies to protect sources of drinking water for communities. Because of that, the EPA recommends DOE contact Washington State Department of Ecology to obtain

information about source water areas in and around the analysis area. If development projects within the analysis area would affect drinking water, then the EA would need to include contaminants of concern and measures to protect drinking water and source areas.

Groundwater extraction, land disturbance related to construction activities, material transportation and storage, waste disposal, inadvertent chemical or hazardous liquid spills, and compaction produced by vehicular traffic, use of existing and new access roads, and other facilities may compact soils and change hydrology, runoff characteristics, and ecological function of sites, affecting flows and delivery of pollutants to water bodies. Therefore, the EA should include a detailed discussion of the cumulative effects from development projects on the hydrologic conditions of the analysis area and vicinity. The document should clearly depict reasonably foreseeable direct, indirect and cumulative impacts to groundwater and surface water resources. For groundwater, the EA should identify potentially affected groundwater basins and any potential for subsidence, and analyze impacts to springs or other open water bodies and biological resources. This is especially important for the proposed land conveyance action due to groundwater contamination within the area. As a result, we recommend the EA include the following:

- A summary of land and groundwater contamination at the site;
- Describe the current remediation efforts and state of cleanup at time of transfer;
- Describe all future assessments, remediation, and long-term monitoring obligations that are required for the site;
- Describe the responsibility for remediation and long-term monitoring that DOE is assuming in the land transfer. The assumptions should be consistent with the EPA guidance¹ on transfer by deed, under Section 120(h) (3) (C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), of real property listed on the National Priorities List (NPL) held by a federal agency (landholding federal agency) where the release or disposal of hazardous substances has occurred, but where all necessary remedial action has not yet been taken.

Roads and Disposal of Discharges

Roads and their use also facilitate sediment transport to streams, increase habitat fragmentation and wildlife disturbance, as well as invasive plant infestations. Roads interrupt the subsurface flow of water. The EA should include data about existing and anticipated new roads and evaluate the change in road miles and density that will occur because of the project and predicted impacts to water quality by roads. Under the CWA, any project construction that would disturb a land area of one or more acres also requires a National Pollutant Discharge Elimination System (NPDES) permit for discharges to waters of the U.S. The EA should document the project's consistency with applicable storm water permitting requirements and should discuss specific mitigation measures that may be necessary or beneficial in reducing adverse impacts to water quality.

The EA should address the potential effects of development projects' discharges, if any, on surface and groundwater quality. The specific discharges should be identified and potential effects of discharges on designated beneficial uses of affected waters should be analyzed. If facilities would be zero discharge,

¹ <http://www.epa.gov/fedfac/documents/hkfin.htm>

the EA would need to disclose the amount of process water that would be disposed of onsite and explain methods of onsite containment. If evaporation ponds would be used for disposal of wastewater, identify chemical characteristics of the pond water and how seepage into groundwater will be prevented. Identify the storm design containment capacity of ponds, explain how overflow in larger storm events will be managed, and discuss potential environmental impacts (drainage channels affected, water quality, biological resources) in the event of overflow. Please note that the disposal of wastewater or other fluids into the subsurface is subject to the requirements of the Underground Injection Control Program, pursuant to the Safe Drinking Water Act and permits may be required, depending on project specifications and federal and/or state requirements.

Water Conservation

The EPA encourages DOE to include in the EA a description of all water conservation measures to implement to reduce water demands. Project designs should maximize conservation measures such as appropriate use of recycled water for landscaping and industry, xeric landscaping, and water conservation education. There are water saving strategies in the EPA's publications on *Protecting Water Resources with Smart Growth*² and *USEPA Water Conservation Guidelines*³. In addition, the EA should describe water reliability for future development projects and clarify how climate change would affect existing and/or other sources. At a minimum, the EPA expects a qualitative discussion of impacts of climate change to water supply, and the adaptability of anticipated development projects to these changes.

Aquatic Resources

The EA should describe all waters of the U.S., including wetlands, that could be affected by development projects, and include maps that clearly identify all waters within the analysis area. It should also include data on acreages and channel lengths, habitat types, values, and functions of these waters. If the projects would result in impacts to aquatic resources, then DOE should work with the U.S. Army Corps of Engineers to determine if projects would need a CWA §404 permit.

If a permit is required, the EPA will review the project for compliance with *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* (40 CFR 230), promulgated pursuant to Section 404(b) (1) of the CWA ("404(b) (1) Guidelines"). Any permitted discharge into waters of the U.S. must be the least environmentally damaging practicable alternative available to achieve the project purpose. The EA should include an evaluation of project alternatives in this context in order to demonstrate the projects' compliance with the 404(b) (1) Guidelines. If actions on land to be conveyed would involve discharges to waters of the U.S., then the EA should include actions to reduce and mitigate resulting impacts.

Please also note that activities affecting floodplains are also regulated under the CWA §404 and Executive Order 11988, *Floodplain Management*. The EA, therefore, should include information explaining anticipated activities in floodplains, alternatives considered, and steps taken to reduce impacts to floodplains. The EA should also identify whether any components of the projects would be within a 50 or 100-year floodplain and discuss appropriate mitigation approaches. Floodplains perform a

² www.epa.gov/piedpage/pdf/waterresources_with_sg.pdf

³ www.epa.gov/watersense/docs/app_a508.pdf

vital function of conveying and dissipating the volume and energy of peak surface runoff flows downstream. Thus, periodic flood flows form and sustain specific habitat types such as wetland and riparian areas within floodplains. As such, it is important to preserve unimpaired flood flows and prevent flood-related damage to downstream resources.

Section 3(d) of the Executive Order 11988 also states that when property in floodplains is proposed for disposal to non-Federal public or private parties, the Federal agency shall:

- (1) Reference in the conveyance those uses that are restricted under identified Federal, State, or local floodplain regulations; and
- (2) Attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or
- (3) Withhold such properties from conveyance.

The EA should address the above requirements in more detail by including a map with floodplains in the selected lands, as well as identifying all applicable Federal, State, and local floodplain regulations, and any actions that DOE would need to take to comply with the Executive Order.

Hazardous Materials, Waste and Solid Waste

The EA should address potential direct, indirect and cumulative impacts of hazardous waste from construction and operation of anticipated development projects. The document should identify projected hazardous waste types and volumes, and expected storage, disposal, and management plans. It should also address the applicability of state and federal hazardous waste requirements. Appropriate mitigation should be evaluated, including measures to reduce the generation of hazardous waste (i.e., hazardous waste minimization). Alternate industrial processes using less toxic materials should be evaluated as mitigation. This potentially reduces the volume or toxicity of hazardous materials requiring management and disposal as hazardous waste. The EA should clarify how impacts from accidental spills would be addressed using safety procedures, spill prevention plans, and cleanup, should a release of hazardous materials (to any environmental medium—air, surface water, groundwater, or soils) occur within the analysis area after conveyance.

The EA should address radionuclide and chemical contamination in soil and/or groundwater within the analysis area and vicinity, and whether anticipated projects may result in a disturbance of radioactive contaminants or their release into the environment. In order to facilitate effective NEPA public disclosure, the EA should provide maps depicting the relationship of the proposed analysis areas, including associated facilities, with known or suspected radioactive contamination. The EA should address other contaminants to expect as an issue of concern in the area. To the extent that contamination may be an issue of concern, the EA should identify feasible measures to take to avoid, reduce or mitigate these impacts.

To the extent that information is not classified, the EA should present information about accidental release or discharge of pollutants in the analysis area, including a discussion of the effects of such accidental releases or discharges on human health and safety. Such discussion would facilitate effective public disclosure and informed public comment under NEPA, particularly in terms of portraying existing conditions ('*baseline*'); when evaluating the merits of 'No Action' compared to the fully-

evaluated action alternatives; and in proposing and refining mitigation to prevent or minimize accidental releases or discharges of pollutants in the future at the site. This is especially important because of radioactive and chemical contamination in the area.

If development projects in the analysis area would involve use of pesticides and herbicides on land conveyed, the EA should address any potential toxic hazards related to the application of the chemicals, and describe actions to take to assure that impacts by toxic substances released to the environment would be minimized.

Habitat, Vegetation, and Wildlife

During construction of the proposed project, clearance of vegetation and movement of soils may be necessary, such as when building aboveground facilities. The EA should describe the current quality and capacity of habitat, its use by wildlife in the proposed project area, especially avian populations and fish. Construction activities also have the potential to disrupt important wildlife species habitat due to habitat fragmentation and the creation of edge effects that may favor some species over the others.

The EA should describe the critical habitat for species; identify any impacts on species and their critical habitats by projects; and how projects will meet all requirements under the Endangered Species Act. The EA should include a mitigation plan with detailed steps to take to minimize or eliminate adverse impacts. For example, construction activities may result in adverse impacts to the shrub steppe habitat, which has low resilience to environmental disturbance. Loss of the shrub steppe habitat would also affect wildlife. The EA should discuss in detail potential impacts to shrub steppe habitat because of anticipated development projects. Projects may also have impacts on native and rare plants and the EA should include their locations and actions to manage their sites to reduce potential impacts on the plants.

During construction, blasting may be required in some areas and may result in increased noise and related effects to local residents and wildlife. The EA should discuss blasting needs, methods, and control of effects, and mitigation of impacts. There should be no placement and storage of blasting equipment and materials or excavation in sensitive areas. The timing of site activities should also be planned so that there would be little to no impacts to plants and animals during crucial seasons in their life cycle. The EA should specify Best Management Practices to protect resources and the role of the Hanford Site Biological Resources Management Plan (DOE/RL-96-32).

Noxious Weeds and Invasive Plants

Among the greatest threats to biodiversity is the spread of noxious weeds and exotic (non-indigenous) plants. Many noxious weeds can out-compete native plants and produce a monoculture that has little or no plant species diversity or benefit to wildlife. Noxious weeds tend to gain a foothold where there is disturbance in the ecosystem. New roads and utility Right of Ways can become a pathway for the spread of invasive plants. If possible, a vegetation management plan should be prepared to address control of such plant intrusions. The plan should list the noxious weeds and exotic plants that occur in the analysis area. In cases where noxious weeds are a threat, we recommend the document detail a strategy for prevention, early detection of invasion, and control procedures for each species. Early recognition and control of new infestations is essential to stopping the spread of infestation and avoiding future widespread use of herbicides, which could correspondingly have adverse impacts on biodiversity and nearby water quality.

There are a number of prevention measures available such as reseeding disturbed areas as soon as possible and cleaning equipment and tires prior to transportation to an un-infested area. Plant seeds can be carried from a source area by the wind, wildlife, on equipment tires and tracks, by water, and on the boots of workers, so care should be taken to implement control procedures in all source areas to avoid spread to unaffected areas. Executive Order 13112, *Invasive Species* mandates that federal agencies take actions to prevent the introduction of invasive species, provide for their control, and minimize the economic, ecological and human health impacts that invasive species cause.

Air Quality Impacts

The EA should address air quality protection. The types of fuels to be used during construction activities, increased traffic during operations, and related VOC and NOx emissions, should be disclosed and the relative effects on air quality and human health evaluated. Dust particulates from construction activities and ongoing operation of roadways are important concerns. The EA should evaluate air quality impacts, and detail mitigation steps to take to minimize associated impacts. This analysis should also address and disclose the project's potential effect on all criteria pollutants under the National Ambient Air Quality Standards (NAAQS), including ozone; visibility impairment, and air quality related values (AQRV) in the protection of any affected Class I Areas, any significant concentrations of hazardous air pollutants, and protection of public health.

Because of the presence of radionuclides in the area, the EA should include the most current information regarding radionuclide emissions affecting the analysis area, consistent with the Federal Clean Air Act and the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. It should also address whether radionuclide emissions would be expected to change substantially under any of the action alternatives, either in terms of the emission types or their volumes. The EA should also fully evaluate mitigation measures to minimize radionuclide emissions to the greatest extent practicable, including for the No Action alternative, and discuss DOE's current efforts to limit, control and minimize radionuclide emissions. Similarly, the EA should evaluate whether the projects may require the disturbance and/or removal of asbestos-containing materials, which are regulated by the EPA under the Clean Air Act and NESHAP, as well as other local entities.

If, during construction of projects, there would be burning of cleared vegetation, then the EA should include a smoke management program that would be followed to reduce public health impacts and potential ambient air quality exceedances.

Cumulative Effects

The proposed action should assess impacts over the entire area of impact and consider the effects of the proposed project when added to other past, present (including existing project) and reasonably foreseeable future projects in and outside the analysis area, including those by entities not affiliated with DOE. Only by considering all actions together can one conclude what the impacts on environmental resources are likely to be. The EPA has issued guidance on how we are to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA*

*Documents*⁴. The guidance states that in order to assess the adequacy of the cumulative impacts assessment, there are five key areas to consider:

- a. Resources, if any, that are being cumulatively impacted;
- b. Appropriate geographic area and the time over which the effects have occurred and will occur;
- c. All past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern;
- d. A benchmark or baseline;
- e. Scientifically defensible threshold levels.

Endangered Species Act (ESA)

The EA should identify the endangered, threatened, and candidate species under ESA, and other sensitive species within the project area. The EA should describe the critical habitat for the species; identify any impacts future actions on land to be conveyed will have on the species and their critical habitats; and how the actions will meet all requirements under ESA, including consultation with the US Fish and Wildlife Service (USFWS) and National Oceanographic Atmospheric Administration. The EA may need to include a biological assessment and a description of the outcomes of consultation with the USFWS under Section 7 of the ESA.

Climate Change Effects

Currently, there is concern that continued increases in greenhouse gas emissions resulting from human activities contribute to climate change. Effects of climate change may include changes in hydrology, sea level, weather patterns, precipitation rates, and chemical reaction rates. The EA document should therefore consider how resources affected by climate change could potentially influence anticipated development projects on land to be conveyed and vice versa, especially within sensitive areas. The EA should also quantify and disclose greenhouse gas emissions from potential activities under the plan and discuss mitigation measures to reduce emissions.

Mitigation and Pollution Prevention

The EA should evaluate the feasibility of adopting mitigation to avoid, reduce or compensate for adverse environmental impacts from construction and operation. The NEPA does not require that an impact be "significant" before mitigation can be presented in a NEPA document. "All relevant, reasonable mitigation measures that could improve projects are to be identified. . . . Mitigation measures must be considered even for impacts that by themselves would not be considered 'significant.' Once the proposal itself is considered as a whole to have significant effects . . . mitigation measures must be developed where it is feasible to do so." (See CEQ's Forty Questions, #19a).

CEQ also issued guidance⁵ on integrating pollution prevention measures in NEPA documents. Many strategies can reduce pollution and protect resources, including using fewer toxic inputs, altering manufacturing and facility maintenance processes, and conserving energy. Consistent with CEQ's

⁴ <http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf>

⁵ Memorandum to Heads of Federal Departments and Agencies Regarding Pollution Prevention and the National Environmental Policy Act, CEQ, January 12, 1993.

guidance, we recommend presenting all reasonable mitigation and pollution prevention measures. Pollution prevention opportunities are discussed in the Federal Facilities Sector Notebook⁶.

Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (October 9, 2009) was also issued to establish an integrated strategy towards sustainability in the Federal Government and to make reduction of greenhouse gas emissions a priority for Federal Agencies. Additionally, Executive Order 13148, *Greening of Government Through Leadership in Environmental Management* (April 21, 2000), was established to integrate environmental accountability into agency decision making and long-term planning processes, across all agency missions, activities, and functions. We recommend that the EA discuss both of these Executive Orders and demonstrate how anticipated development projects will be consistent with them.

Coordination with Land Use Planning Activities

The EA should discuss how the proposed action would support or conflict with the objectives of federal, state, tribal or local land use plans, policies and controls in the analysis area and vicinity. The term "land use plans" includes all types of formally adopted documents for land use planning, conservation, zoning and related regulatory requirements. Proposed plans not yet developed should also be addressed if the appropriate government body in a written form has formally proposed them. Of particular importance, the EA should address existing constraints in the analysis area e.g., power lines and utility Right-Of-Ways, floodplains, and how acceptable land uses will be consistent with the results of the CERCLA 120(h) reviews, applicable city of Richland and Benton County zoning requirements, and the ability to obtain construction and operating permits and licenses.

Coordination with Tribal Governments

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. The EA should describe the process and outcome of government-to-government consultation between DOE and each of the tribal governments within the analysis area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternatives.

National Historic Preservation Act (NHPA) and Executive Order 13007

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act (NHPA). Historic properties under NHPA are properties that are included in the National Register of Historic Places (NRHP) or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO). In addition, Section 106 requires that Federal agencies consider the effects of their actions on cultural resources, following regulation in 36 CFR 800. Under NEPA, any impacts to tribal, cultural, or other treaty resources must be discussed and mitigated.

⁶ <http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/federal.pdf>.

Executive Order 13007, *Indian Sacred Sites* (May 24, 1996), requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian Religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites. It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site.

The EA should address the existence of any Indian sacred sites in the analysis area. It should address Executive Order 13007, distinguish it from Section 106 of the NHPA, and discuss how DOE will avoid adversely affecting the physical integrity of sacred sites, if they exist. The EA should provide a summary of all coordination with Tribes and with the SHPO/THPO, including identification of NRHP eligible sites, and development of a Cultural Resource Management Plan, including the transferee's coordination with affected tribes.

Environmental Justice and Public Participation

The EA should include an evaluation of environmental justice populations within the geographic scope of the analysis area. If such populations exist, the EA should address the potential for disproportionate adverse impacts to minority and low-income populations, and the approaches used to foster public participation by these populations. Assessment of the conveyance impacts on minority and low-income populations should reflect coordination with those affected populations. One tool available to locate Environmental Justice populations is online at <http://epamap14.epa.gov/ejmap/entry.html>.

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), directs federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process.