TESTIMONY

OF

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BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE

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RAYBURN OFFICE BUILDING

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Chairman Shimkus, Ranking Member Tonko, and distinguished members of the subcommittee, thank you for the opportunity to appear before you today. My name is Michael A. Houlemard, Jr., and I am the Executive Officer of the Fort Ord Reuse Authority, also known as FORA. For more than 20 years, FORA has been the State of California authorized Local Reuse Authority overseeing the Monterey Bay region's economic recovery of the former Fort Ord from the impacts of its closure under the Base Realignment and Closure (BRAC) process. FORA is a regional state public agency/corporation representing more than 20 stakeholders that serve on its State authorized Board. FORA unites the diverse interests of communities, state governments, the military services, and the private sector on issues of base closure and realignment, property transfer, community redevelopment, public-private partnerships, and community-military partnerships. I have also served as President of the Association of Defense Communities from 2008 to 2011. My comments today reflect a 25 year background in working for and with communities impacted by Superfund (Comprehensive Environmental Response Coordination and Liability Act or CERCLA) remediation/cleanup process. I will focus on my observations of the community experience with respect to the property disposal process, the impact and role of community/states, funding issues, and engaging citizens in the process.

ENVIRONMENTAL CLEANUP: THE INEVITABLE CHALLENGE: LESSONS LEARNED

The environmental cleanup at Fort Ord does not involve exotic nuclear or biochemical weapons. This has made the reuse planning for the land easier in the sense that with some exceptions the environmental damage is not necessarily life threatening. The environmental cleanup at Fort Ord, which began in 1985 as part of federal Superfund legislation requires the remediation of all contaminated sites that are identified to levels that meet local, state and federal regulations. Since the downsizing/closure was announced in 1991, the US Army has undertaken a variety of efforts to remediate remnant hazards and other contamination under CERCLA. The overall cleanup efforts have been/are generally divided into two parts.

Groundwater/Soil:

The first part deals with contaminated soil and water, usually the result of toxic substances, such as petrochemical distillates. This type of contamination typically result from leaking underground storage tanks, poor management practices that allowed dumping of grease, oil and solvents,

and unlined landfills that leach contaminants into the groundwater.

After the base closure, several additional areas of soil contamination were discovered – primarily below or near vehicle maintenance and motor pool areas, a 150 +/- acre landfill, a base airport wash area/burn pit and some munitions response sites contaminated with chemicals that spilled onto the ground. In addition, soils at former beach target ranges were contaminated with lead from heavy training use for six decades.

At the former Fort Ord we have ongoing issues that pertain to groundwater contamination with volatile organic compounds (VOCs) in various locations – primary in the northern sector of the base. One of the contaminated groundwater plumes migrated off the former installation and is now in monitoring. However, there remains ongoing operational groundwater treatment systems have been constructed and managed by the US Army under CERCLA. Since the discovery of the plumes a couple of years ago, these contaminated groundwater aquifers have not been available to address the local demand for water resources. These contaminated plumes are the basis for a fence line to fence line (basewide) remediation under CERCLA.

This contamination is common both on and off military bases, and is currently regulated by the federal government through its Super-Fund management program in many cases under CERCLA procedures. Fort Ord environmental cleanup for this type of contamination is also regulated at the State level by CAL/EPA through their toxic substances control division.

Munitions and Explosives of Concern/Unexploded Ordnance:

The second part of the cleanup deals with the unexploded ordnance at Fort Ord. The US Army decided to follow its own munitions cleanup policy in areas of Fort Ord where unexploded ordnance present a constraint to reuse plan implementation.

The first major project slated for remediation was the future Fort Ord Dunes State Park, located on the beachfront. Work was completed in the summer of 1998, when the last of 7,000 truckloads of lead contaminated sand was removed from the site. Since the 1940s, the Army had used the sand dunes at Fort Ord as backstops for its small arms target ranges. The Army's October 1995 Remedial Investigation Feasibility Study identified the lead bullets as the source

of the high lead levels found in the sand, up to 46,000 parts per million (ppm). Over an 11-month period, cleanup crews excavated and sifted over 100,000 cubic yards of sand, recovering an estimated 800 tons of bullets and fragments. The $8 million cleanup plan was developed by the Army, the U.S. Environmental Protection Agency ("EPA"), California Department of Toxic Substances Control, and the Central Coast Regional Water Quality Control Board. Working under Contract with the Army, International Technology, the prime contractor, scraped two feet of sand from selected areas. Since this area was designated for public use the local community was very actively engaged in this cleanup effort. After it was complete, the remnant lead was reduced to safe levels and the Army re-contoured the dunes and contracted with CA State Parks to replant the area.

Unexploded ordnance (UXO) and munitions and explosives of concern ("MEC") on an 8,000 acre firing range/impact area and at several other munitions training areas created a substantial risk to catastrophic exposure to the adjacent community. Many of these former ranges areas now are either part of or slated to become a part of the Fort Ord National Monument that was dedicated in 2012. Over the course of the past twenty years the types of ordnance and MEC found at Fort Ord has included artillery projectiles, rockets, hand grenades, land mines, pyrotechnics, bombs and other demolition materials. The United States Army has continued its work to remediate these issues including entering into an Environmental Services Cooperative Agreement with FORA for completing the munitions removal work on approximately 330 acres. The Army and FORA have incorporated a robust site security program that includes fencing, monitoring and posting with warning signs to inhibit unauthorized access.

This UXO cleanup has proven to be the most difficult and disruptive portion of the environmental cleanup. By following its own policy of the time that munitions were not a listed contaminant under CERCLA that in this area, the Army avoided several steps under the CERCLA regulations, which were considered unnecessary. This resulted in a successful lawsuit filed by a group of local citizens who organized themselves and received an EPA grant for legal assistance.

The desire of the community to set aside large areas for open space and the need to provide ecological communities for endangered species established a Habitat Management Plan for Fort Ord. The plan reserved as managed open space large contiguous areas of the base, which in

many cases corresponded to the training areas used for open field and weapons combat training involving live firing of large and small caliber weapons. Fort Ord was used for Army training that included the storage, transport and use of many different weapons and munitions. For various reasons, a certain percentage of these munitions failed to detonate when they were fired. In addition, burials of unused munitions by soldiers sometimes occurred and have been found along roadways or near munitions training areas.

A major potential conflict has risen with the Regional Air Quality Control Board over the use of controlled burns to help remove unexploded ordnance. This problem is made more difficult by the fact that fires are a part of the natural cycle, which supports the unique ecological systems that are present. In fact, fire is a required element in the natural progression of the habitat at the Fort Ord National Monument. This conflict between resource and environmental regulatory oversight has created a very specialized demand for MEC clearance efforts.

Now that the HMP has imposed a contractual obligation to preserve this unique environment, bulldozers, which could destroy the unique habitat, cannot be used for ordnance removal. If controlled burning is not allowed, because particulate matter released into the air by burning does not meet local air quality standards, the clearing of the land to allow unexploded ordnance to be removed remains in jeopardy. This demand often creates conflict with local community as the unavoidable smoke plume may at times cause respiratory issues.

- ***Environmental Hazard Characterization/Records:***

Most military installations have developed along the lines of mission critical decisions. In that sense they are not typically developed with a civilian future in mind, and often the records of the physical improvements are wanting – primarily as they were rarely planed or processed as though they would once become civilian. Consequently, the characterization of bases in nearly all cases is insufficient and the clear records of potential past hazards or contamination incomplete or inadequate. While many efforts to improve the inventory of environmental issues have been undertaken, there are undoubtedly additional remnant hazards.

- ***Community Engagement:***

Every community has (at a minimum) the right to fully understand the remediation of suspected

and/or known hazards that have the potential for citizen exposure. It has been our experience that engaging the community at all levels has the best chance or assuring community clean up and ultimately economic recovery/reuse. Whether the issue is a state level concern, a local county/municipality or at the citizen/neighborhood level – effective engagement requires proactive and solicitous two way documented communication. In order to truly be effective leadership must fully committed to connecting at public, political, and personal levels that requires applying a range of communication modes from print/electronic/social media, to neighborhood meetings, to formal; town halls and public meetings (as may be required regulation). Absent the very highest levels of commitment to bringing multiple interests to the exchange, many voices will not be heard and citizens will be unaware of the opportunity or the need to participate.

Our experience tells us that these key levels of commitment are often not emphasized in typical Superfund activities, even though engaging community members in problem-solving issues that affect them is fundamental at the local level. I believe that the most effective way to achieve successful community participation in public environmental health issues, especially the elimination of cultural disparities in funding or enforcement, is to actively engage citizens experiencing the potential exposure or the problem in the resolution. Community engagement is most effective when the full range is from identifying the relevant risk and issues, to making decisions to remediate, to evaluating and sharing the results with the community, to creating long term stewardship programs and follow up.

The US EPA has authorization to provide grants to local organizations to assist in public involvement. These Technical Assistance Grants, while typically well meaning, do not provide capacity building or have sufficient follow up on recipient leadership. If these awards are to continue there must be provisions for capacity building and a means to secure effective leadership so that communities are served in getting technical and other support in the often confusing and the technically challenging/sophisticated remedial processes. It may be better to work with a local jurisdiction to build its capacity to engage in two way community level involvement and to access social and other media to inform the public where the seek information.

We have found the basic principles of collaborative processing and community engagement to

be at the core of our successes in completing our field work and follow up to our munitions removal work on the former Fort Ord. As well, fully collaborative o\processes have ensured that our state and local regulatory agencies work hand in hand with the US EPA to achieve the success we are proud of at the former Fort Ord.

CONCLUSION/ AREAS OF IMPROVEMENT

Some specific areas for improvement include the following:

The National Contingency Plan. This could easily be described as an example of the perfect being the enemy of the good. The NCP is complex, called "byzantine" by some, and very much process over substance oriented. The criticism that CERCLA funds are disproportionally spent on process at the expense of effective remediation seems well deserved. While the NCP is not a "bad" regulation, there is little doubt that it is process heavy, with attendant delay and serial rather than parallel undertakings/reviews.

1) When the remediation involves polychlorinated biphenols (PCBs), the interface between CERCLA and TSCA (Toxic Substance Control Act), the interface between the two statutes is difficult, owing in part to the division of labor within EPA regional offices and the imprecise language of the TSCA implementing regulations. Further, unlike CERCLA, TSCA makes no provision for a response action contractor or a responsible party, unnecessarily imposing risk on a municipal government that performs PCB removal pursuant to a cooperative agreement with the military service pursuant to 10 U.S.C. 2701(d). This is a clear example of "let no good deed go unpunished."

2) Consider "correcting" the "flaw" that prohibits Brownfields support in certain unique Superfund sites like the former Fort Ord and McClellan Air Force Base.

Lessons Learned

1) The difficulty for local citizenry to get up to speed with complex sophisticated regulatory layers often leads to legal disputes, unnecessary internecine bureaucratic "warfare," and property transfer/project delivery delays.

2) The federal government's role should be viewed as leaning heavily toward protecting communities and citizens from exposure rather than protecting the interest of the federal agencies

3) Eliminating contravening regulatory issues through focused oversight is essential to

enable community understanding – which leads to community voices being effective rather than disruptive.

4) Move to address the long-term stewardship issues that are currently a major potential unfunded mandate to local communities.