

January 17, 2001

Ms. G. Leah Dever, Manager
Oak Ridge Operations
U.S. Department of Energy
P.O. Box 2001
Oak Ridge, TN 37831

BY FACSIMILE

Re: Boeing Floodplain environmental assessment (DOE/EA-1361)
Parcel ED-3 environmental assessment (DOE/EA-1316)
Oak Ridge Reservation land use planning

Dear Ms. Dever:

I am writing on behalf of the Advocates for the Oak Ridge Reservation (AFORR) and the Tennessee Conservation League (TCL) to urge you to refrain from making individual land use decisions that would effectively dispose of separate, discrete parcels of the Oak Ridge Reservation (ORR) prior to completing a comprehensive environmental impact statement (EIS) that considers the impacts of these and other land-use actions on the Reservation as a whole, as required by the National Environmental Policy Act (NEPA).

We realize that the public comment periods for the two environmental assessments (EAs) referenced above have closed. However, we want to reinforce comments submitted by AFORR on both EAs and TCL on the Parcel ED-3 EA to the effect that the potential environmental impacts of these land use decisions are highly significant. In fact, particularly with regard to the sale of the Boeing Floodplain Strip, we believe that these impacts are significant enough in their own right to warrant detailed evaluation in an environmental impact statement before deciding whether to proceed with the proposed actions.

In addition, there can be little doubt that the pending decisions on the "Boeing Floodplain" and "Parcel ED-3" are but

pieces or segments of a larger land use plan, the Comprehensive Integrated Planning Process for the Oak Ridge Reservation, and should be evaluated as part of or upon completion of a comprehensive EIS. The Supreme Court recognized the necessity of considering such cumulative impacts even in the absence of a program or plan in Kleppe v. Sierra Club, 427 U.S. 390 (1976). "Thus, when several proposals for ... actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together." Id. At 409.

As you know, NEPA requires federal agencies such as DOE to prepare an environmental impact statement on any "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. §4332(2)(c). There can be no doubt that preparation of a comprehensive integrated land use plan for federal lands such as the Oak Ridge Reservation constitutes such a major federal action. Council on Environmental Quality (CEQ) regulations interpreting NEPA note that the following agency actions are subject to NEPA analysis: adoption of formal plans which guide alternative uses of federal resources or upon which future agency actions will be based; adoption of programs, such as a group of concerted actions to implement a specific policy or plan; approval of specific projects such as management activities located in a defined geographic area. 40 CFR Section 1508.18(b).

Yet, as far as we can tell, the existing comprehensive integrated plan for ORR was prepared without the benefit of public participation envisioned by NEPA. Until that comprehensive NEPA analysis is concluded, we believe it is improper to isolate individual parcels or segments of ORR for environmental analysis, unless they are afforded the same level of detailed review that would be contained in a comprehensive EIS. NEPA was fundamentally intended to "foster both informed decisionmaking and informed public participation." State of California v. Block, 690 F.2d 753, 761 (9th Cir. 1982). A comprehensive EIS would serve both goals in this instance.

Furthermore, we believe comments submitted by AFORR on both EAs and TCL on the Parcel ED-3 EA demonstrate that decisions to dispose of or develop those parcels warrant site-specific EISs, especially in the absence of a comprehensive EIS to which those analyses could be tiered, because of their potentially significant impacts on the quality of the human environment (especially wildlife values, recreation and preservation

opportunities). Segmentation of proposals or plans for NEPA purposes is particularly problematic when cumulative impacts are of concern, such as when land disposition decisions threaten cumulative impacts on natural areas and wildlife resources. Such cumulative impacts should be evaluated and discussed in a single NEPA document or EIS. 40 CFR Section 1508.25(a)(2).

Finally, it appears that in DOE's rush to complete the analysis for the Boeing Floodplain EA, DOE/EA-1361, the public's opportunity to review and comment upon NEPA analyses was short-changed. To be specific, TCL was not notified of the opportunity to review and comment on the Boeing Floodplain EA until shortly before the deadline for submitting comments. TCL's request that DOE extend the time period for submittal of comments was denied outright. Nor does it appear that state agencies were afforded an adequate opportunity to comment upon the Boeing EA. NEPA was intended to foster informed public participation in agency decisions. Agency decisions that unnecessarily curtail public participation violate the spirit of the law and detract from public confidence in subsequent agency actions.

We appreciate your past and ongoing efforts to develop a comprehensive land use plan for the Oak Ridge Reservation, but we strongly encourage you to complete the NEPA analysis which should accompany that process before proceeding with individual land use decisions that should be governed by that comprehensive plan. We would appreciate the opportunity to discuss these issues with you at your earliest convenience, certainly before finalizing the two EAs referenced above, and we look forward to working with DOE on the development of a comprehensive EIS for land management on the Oak Ridge Reservation.

Sincerely,

Richard A. Parrish
Senior Attorney

cc: Carol Borgstrom, DOE Office of NEPA Policy and Compliance
Katy Kates, DOE Realty Officer, Oak Ridge Reservation
David Allen, DOE ORO NEPA Compliance Officer