

# State of Connecticut

RICHARD BLUMENTHAL  
ATTORNEY GENERAL



Hartford

August 4, 2008

Ms Diane McCartin  
U.S. Army Corps of Engineers  
P.O. Box 89  
Louisville, KY 40201-0059

**RE: Middletown Armed Forces Reserve Center**

Dear Ms. McCartin:

I write to you out of grave concern about the selection and evaluation process for the proposed Armed Forces Reserve Center in Middletown, Connecticut.

While I strongly support your objective -- providing the most effective modern training facility for our dedicated and able armed forces -- I believe the present site selection process is legally problematic, even objectionable. Unquestionably, there are profoundly significant legal flaws in the selection process to date. Specifically, I am concerned that the Corps has failed to adequately examine alternatives to the selected site or properly evaluate known environmental conditions, as required by federal law.

The Governor's announcement today that our National Guard is reducing the project's scope means that the process can and should begin anew -- without any pre-selection of the current site. The smaller scope makes selection of another site more feasible. The law makes it mandatory.

As you know, the National Environmental Policy Act (NEPA), 42 USCS 4321, *et seq*, requires federal agencies to consider the environmental consequences of their actions and to prepare an environmental impact statement for any major federal action that significantly affects the quality of the human environment. Representatives of the Corps publicly stated at a press conference that I attended in Middletown, Connecticut, on July 31, 2008, that this project requires a NEPA review. I fully agree.

One of the requirements of NEPA is that environmentally preferable alternatives be considered to determine whether they are feasible. I am deeply disturbed that the Corps' public statements to date suggest that the Boardman Road site is the "preferable" alternative and that you simply plan to do a basic environmental assessment (EA) -- without committing to conduct a more intensive and encompassing environmental impact statement (EIS).

I understand that the site contains a significant amount of wetlands and other potentially significant environmental resources, as well as a possibly historic 18<sup>th</sup> century farmhouse. In this situation, a complete comprehensive environmental impact statement is mandatory. A more cursory environmental assessment is legally insufficient.

More importantly, the Corps cannot permissibly at this point designate the Boardman Road site as the preferred site. Such selection is illegally premature, and unauthorized. As the Corps officials noted, *none* of the necessary historical, archeological, traffic and wetlands studies has been performed. The Corps' action is both illogical and illegal -- pre-selecting a preferred site without having done even the most minimal of examinations under NEPA. Furthermore, the Corps fundamentally undermines public confidence in the process -- suggesting that it already has determined that Boardman Road is the best site and that this project will have no significant environmental or sociological impact when the necessary studies have not been started, let alone completed.

I am also disturbed that Corps officials have failed to publicly acknowledge that they will follow the mandatory requirements of the Clean Water Act, 33 U.S.C. § 1351, *et seq.* Because of the highly significant areas of wetlands on the site, the Corps clearly needs a permit under section 401 of the Clean Water Act. Section 401 permits are reviewed and issued by the Connecticut Department of Environmental Protection (DEP) and, to date, I understand that no Section 401 permit application has been filed with the DEP. Without a Section 401 permit, this project cannot go forward.

These legal flaws and defects appear to raise legally actionable objections. We have identified others as well. I assure you that I will closely monitor compliance with all legal requirements, including NEPA and the Clean Water Act, for this project. In particular, I will examine the environmental assessment and environmental impact statements closely to ensure that the environmental consequences of construction and consideration of alternative sites are given sufficient and accurate weight, especially in light of wetlands and other natural resources.

I will take all appropriate action to ensure that Connecticut's environment is adequately protected and that the process is truthful and transparent.

In order for my staff to begin their review, I respectfully request that the Corps provide my Office the following information and documents:

- Copies of any environmental studies by the Corps, wetlands delineation maps and a map showing the proposed alternate access road referred to at the Corps' July 31 press briefing

- A list of the 20 alternative sites that Corps officials stated they have considered in Middletown, as well as all documents related to the process by which the Corps discounted the 19 other sites and selected the Boardman Road site.
- The opinion letter from the Corps of Engineers counsel that reportedly concludes that BRAC legislation mandates only sites within the geographic borders of specific designated towns can be reviewed. Corps officials referred to this opinion at the press briefing.

If necessary, you may consider this a request for documents under the Freedom of Information Act, but I would hope that you will voluntarily provide this minimal first set of information and documents.

The Corps has indicated that the NEPA review for this project has a 6-month timeline, and so we ask that these materials be provided within 15 days.

As a matter of both law and public policy, I strongly recommend that alternative sites be considered as soon as possible. This one seems objectionable because of its potential impact on the community and quality of life, as well as legally problematic on environmental grounds. This point is significantly strengthened by the Governor's newly announced plan to scale back the Armed Forces Reserve Center with fewer people, vehicles and building space, requiring significantly less acreage. The site selection process should go back to square one.

I look forward to the opportunity to comment on the scope and substance of the environmental review and impact statement. I expect the Army Corps to make decisions with the public's interest in fragile natural resources paramount in its considerations. To that end, I look forward to working with the Army Corps to ensure that the most appropriate site is chosen.

Very truly yours,



RICHARD BLUMENTHAL

RB/pas