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December 29, 1997

Ms. Linda Kirts
District Counsel
U.S. Army Corps of Engineers
Walla Walla District
201 North 3rd Avenue
Walla Walla, WA 99362-1876
FAX No. (509) 527-7819

Via Fax and Mail

Re: Site Construction Project
Columbia Park, Washington

Dear Ms. Kirts:

This is to acknowledge receipt of Mr. Baker's letter of December 23, 1997. Enclosed with the letter was a copy of various documents relating to a contract to be awarded by the Army Corps of Engineers for construction of site "protection" features at the location where the Kennewick Man skeleton was discovered (hereinafter referred to as the "Construction Project"). The documents enclosed with the letter are entitled "Construction Solicitation and Specifications" and consist of a Solicitation, Offer, and Award and various attachments thereto (hereinafter referred to as the "Contract Documents").

On behalf of my clients, I would like to thank you and Mr. Baker for providing me with a copy of the Contract Documents even though done at such a late date. As you are aware from my prior correspondence, this is a matter of great interest to my clients. The Contract Documents provide the first concrete information we have received concerning the Army Corps' plans for this extremely important site.

Mr. Baker's letter stated that any comments concerning the Construction Project should be sent to you by no later than today. The following comments are provided in an effort to accommodate that deadline. However, since Mr. Baker's letter was not received by my office until December 26, 1997, and since the following two days were a weekend, I have not had an opportunity to discuss this matter in detail with my clients or with other potentially interested scientists. As a result, the following comments should not be viewed

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as definitive or as all-inclusive, but merely as initial comments intended to convey the general nature of our concerns. Additional comments may be forthcoming after I have consulted with my clients and other interested persons.

Subject to the above qualifications, our comments concerning the Construction Project are as follows:

1. We are concerned about the potentially harmful effects the Construction Project may have on the scientific value of the discovery site and on any archaeological deposits or materials that may still remain at the site. According to the Contract Documents, the Project will cover the slope and beach of the discovery site with approximately two to four feet of topsoil and rock fill (up to 24 inches in diameter). This fill will be held in place with 12 inch diameter coir fiber logs placed at approximately three foot intervals parallel to the river. Among other things, placement of these materials on the site (and the activities associated with their placement) could have the following harmful effects: (a) skeletal materials and other fragile objects could be crushed by the weight of the fill and the logs; (b) the stakes used to anchor the logs could damage skeletal materials and other fragile objects; (c) the chemistry of site sediments could be changed by organic and inorganic compounds that may leach from the fill and other materials (i.e., coir fiber logs, bioremediation materials) that will be placed on the site.

2. We are also concerned that the Construction Project will create an almost insurmountable barrier to scientific investigation of those portions of the site that will be covered by the Project. In addition to the fill and logs noted in point 1 above, the Contract Documents indicate that the affected areas will be covered with erosion control blankets and with dogwood, willow and cottonwood planted at close intervals. Once it has been put in place, this covering will be very difficult and inordinately expensive to remove (even in small limited areas). As the Army Corps is aware, scientific investigation of the site has not been completed. Further data needs to be obtained concerning the circumstances that lead to deposition of the Kennewick Man skeleton, and it has yet to be determined whether there are any other archaeological deposits or materials at the site. If there is a need to install erosion control measures at the site, a more science friendly type of proposal should be developed given the immense scientific importance of the site.

3. We object to completion of the Construction Project before Dr. Huckleberry has had a fair opportunity to carry out the geoarchaeological investigation requested in his ARPA permit application (at least insofar as the Project would adversely affect his investigation). Among other things, the covering to be placed over the site could impact Dr. Huckleberry's ability to: (a) excavate one of the most critical portions of the trench he has proposed (i.e., that portion which intersects the bank); (b) obtain core drillings along the slope of the bank; (c) excavate a continuous stratigraphic exposure at or near the top of the slope (and intersecting with the river end of the trench). In this connection, we note that

Dr. Huckleberry has yet to receive approval from the Army Corps for the project requested in his permit application. Although Lt. Col. Curtis sent him a letter on October 31 1997, purporting to grant his permit, in fact Dr. Huckleberry was not authorized to carry out his requested project. As we have noted in prior correspondence, we do not view the Corps' recent limited study project as an adequate substitute for Dr. Huckleberry's project. If the Corps does proceed with its Construction Project, we will treat it as de facto denial of Dr. Huckleberry's permit application to the extent it prevents completion of all aspects of his proposed site investigation.

4. We also object to completion of the Construction Project before the beach and slope sediments in the area of the skeleton's discovery have been thoroughly searched for skeletal and archaeological materials. As the Corps is aware from Dr. Chatters' investigation notes, not all of the Kennewick Man skeleton has been recovered. The recent discovery of another bone fragment at the site demonstrates that it may still contain some or all of the missing pieces of the skeleton. Given the scientific and cultural importance of the skeleton, every reasonable effort should be made to retrieve as much of it as possible. In addition, it is important to determine whether the site contains the remains of one or more other individuals. Otherwise, questions may always linger as to the source and significance of the nonmatching pubis bone that was added to the collection after it was placed in its present repository.

5. We also object to the Corps' failure to provide us with timely information concerning the Construction Project. The Contract Documents indicate that they were issued on December 10, 1997, and that bids for the Project were to be submitted by December 17, 1997. They also indicate that work on the Project is to begin within five days of contract award, and completed within 14 days (and in no event later January 31, 1998). Mr. Baker's letter acknowledges that on November 10, 1997, I requested information concerning any Corps plans for the discovery site. His letter failed to acknowledge, however, that I made similar requests on November 6, 1996, December 16, 1996, and July 29, 1997. Despite these repeated requests, we were excluded from information about the Construction Project until last Friday, December 26, 1997. This is in marked contrast to the treatment awarded to tribal claimants who were given information concerning the Corps' plans as early as October 1996. Given these circumstances, we can only interpret the Corps' actions in this matter as reflecting a deliberate attempt to deprive plaintiffs of a meaningful opportunity to participate in or affect the Corps' plans for the site.

6. We would also like to note that the documents sent by Mr. Baker do not provide all relevant information needed to adequately assess and comment on the Corps' Construction Project. Among other things, we have questions concerning the following matters:

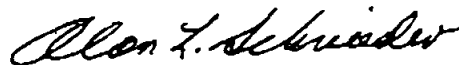
- (a) Has an award been issued for the Project contract?

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- (b) If so, to whom was it awarded and when is work scheduled to commence?
- (c) What measures, if any, have been taken by the Corps to comply with the requirements of the National Historic Preservation Act and any other statutes, regulations or directives that may apply to the Project.

I look forward to receiving your reply concerning these matters before the Corps' proposed Project has become an accomplished fact.

Very truly yours,



Alan L. Schneider

ALS/dmc

cc: All Clients
G. Huckleberry
T. Stafford
J. Chatters
P. Barran
D. Rubanoff