

Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940



New Business - Development and Environmental Services Group

5479

J.1.

2/7/2023

Subject:

Consideration, re: Department of the Army Right-of-Entry for Environmental Assessment and Response for the Naval Air Station Banana River Off-Base Disposal Area designated as a Formerly Used Defense Site (FUDS) - District 4

Fiscal Impact:

None

Dept/Office:

Public Works/Engineering and Natural Resources Management Department

Requested Action:

It is requested that the Board of County Commissioners review and consider the United States Army Corps of Engineers' (USACE) request to sign the Right-of-Entry (ROE) for Environmental Assessment and Response for the area formerly known as the Naval Air Station Banana River Off-Base Disposal Area, and provide direction to the County Manager for further action.

Summary Explanation and Background:

USACE manages the Defense Environmental Restoration Program for FUDS on behalf of the Department of Defense and has requested a ROE, on behalf of its contractor, to perform environmental testing and potential response in the Rights-of-Way (ROW) for the area formerly known as the Naval Air Station Banana River Off-Base Disposal Area located south of Patrick Space Force Base in unincorporated Satellite Beach. USACE, pursuant to its policies, does not obtain local agency permits to conduct this type of work. Instead, it requests governmental entities, in this case the County, as a property owner, to sign its ROE form granting it, and its contractors, access to sites. The ROE would grant USACE authority to conduct any testing and remedial activities in the ROW that it deems necessary without requiring prior County approval, concurrence, or inspection. However, pursuant to the ROE, USACE will coordinate activities with the County at least fourteen days prior to the start of work. Given the sensitive nature of the request and potential impacts to homeowners as well as the traveling public, staff decided it was prudent to request Board direction.

The ROW in this area ranges from 50 feet to 80 feet in width, which could mean the potential for large excavations, road closures and detours, deconfliction with multiple utilities, semi-permanent/permanent monitoring wells inside County ROW, etc. As understood, there will be several steps in the process, the first being testing and, depending on what issues are encountered, remedial activities that may vary greatly depending on the nature and extent of any contamination found. USACE advised staff that the ROE cannot be modified for any reason, including our request of a phased approach in which they would be required to brief us on their findings prior to receiving permission to excavate. However, USACE indicated they require the flexibility to perform any and all work necessary without delay. In addition, their ROE form requires a 90-day

notice in order for the County to revoke their entry, but with the potential for costs incurred by USACE and its contractor/s to be assessed against the County for early termination. The ROE also does not include any of the County's indemnification language that would normally appear if the permitting process outlined in Chapter 86, Brevard County Code, was followed.

As described in the ROE, access to County-owned property is limited to the following purposes: "investigation of the property for potential contamination related to former Navy disposal activities, including but not limited to operating geophysical equipment, digging test pits and/or selected objects to identify them, and collecting environmental samples including constructing, operating, maintaining, and removing groundwater monitoring wells and other devices for monitoring and/or collecting soil, air, and water samples." The lands affected are "...all of the tracts or parcels of land lying and being in the ROW shown in Exhibit A [of the ROE] within an unincorporated area of Satellite Beach, Florida." The ROE, including the referenced Exhibit A, is attached hereto for reference, along with handouts that were provided by USACE.

It is also important to note that while the requested action is for USACE and its contractor/s to access the County's ROW, they will likely also affect unincorporated Brevard County constituents' private property of which USACE will coordinate with affected owners directly for permission and access. As USACE requested and received the Florida Department of Environmental Protection's concurrence in starting the geophysical investigation (ground penetrating radar) while regulatory review of the Uniform Federal Policy - Quality Assurance Project Plan or "work plan" continues and is hosting a "community drop-in" between 3:30 pm and 7:30 pm on Thursday, February 16, 2023, at the Pelican Beach Club House (1495 A1A, Satellite Beach), staff felt it prudent to apprise the Commission of the USACE request given the time sensitivity even though they (USACE) are unable to attend this Board meeting to answer potential questions, due to existing commitments. While staff is working to arrange a mutually beneficial time for USACE to address the Commission at a subsequent meeting, they offered the following links for review:

<https://www.youtube.com/watch?v=Cc2lVP0pqBg> and <https://www.saj.usace.army.mil/BananaRiver/>.

County staff has been in contact with USACE by phone, via email, and over Teams meetings to discuss our concerns over many months, and the County submitted a request for consideration to USACE to have certain concerns addressed. That request and their response, which was received January 13, 2023, are also attached for consideration by the Board.

Based on the above sensitivity and timing concerns, the following actions are provided for the Board's consideration:

- A. Delay Decision - The Board delays making a decision until USACE can attend a subsequent Board meeting to provide a short brief and address any concerns.
- B. Accept - The Board accepts USACE's request and authorize the County Manager to sign subsequent documents.
- C. Reject - The Board rejects USACE's request.

Contact: Christine Verrett, Special Projects Coordinator III, 321-350-8328

Clerk to the Board Instructions:

J.1.

2/7/2023

Please forward the Board action to the Public Works Department and Natural Resources Management Department





February 8, 2023

M E M O R A N D U M

TO: Marc Bernath, Public Works Director Attn: Christine Verrett

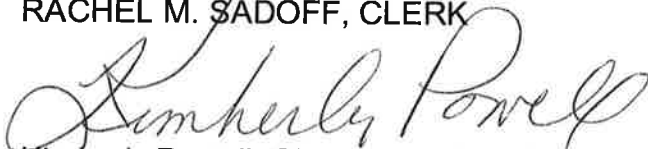
RE: Item J.1., Department of the Army Right-of-Entry (ROE) for Environmental Assessment and Response for the Naval Air Station Banana River Off-base Disposal Area Designated as a Formerly Used Defense Site (FUDS)

The Board of County Commissioners, in regular session on February 7, 2023, reviewed and approved consideration of the United States Army Corps of Engineers' (USACE) request to sign the ROE for Environmental Assessment and Response for the area formerly known as the Naval Air Station Banana River-Off Base Disposal Area; and provide direction to the County Manager for further action to sign subsequent documents.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ns

cc:

County Manager
Natural Resources

**Department of the Army
Right-of-Entry for Formerly Used Defense Sites Program**

Naval Air Station Banana River Off-Base Disposal Area

Project Number I04FL002701

The undersigned, hereby grants to the Department of the Army, its employees, contractors, and subcontractors a Right-of-Entry on the property located in the State of Florida, County of Brevard, and described as: all of the tracts or parcels of land lying and being in the right-of-way shown in Exhibit A within an unincorporated area of Satellite Beach, Florida.

1. This Right-of-Entry is granted upon the following terms and conditions. This Right-of-Entry may be exercised only for the purposes of: investigation of the property for potential contamination related to former Navy disposal activities, including but not limited to operating geophysical equipment, digging test pits and/or selected objects to identify them, and collecting environmental samples including constructing, operating, maintaining, and removing groundwater monitoring wells and other devices for monitoring and/or collecting soil, air, and water samples. All proposed activities will be coordinated with the Owner fourteen days prior to start of work.
2. This Right-of-Entry may be exercised at any time after January 2, 2023 and is anticipated to end in or around December 31, 2026 but may be exercised until the work described above is complete.
3. This Right-of-Entry does not grant any right to enter into any structure or building located on the property described above except upon written approval of the property owner.
4. If any action of the Government's employees or agents in the exercise of this Right-of-Entry results in damage to the real property, the Government will, in its sole discretion, either repair such damage or make an appropriate settlement with the Owner. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage. The Government's liability under this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any damages other than those provided for herein.
5. This Right-of-Entry may be revoked in writing by the undersigned upon no less than 90 days prior notice delivered to the Department of the Army at: Formerly Used Defense Sites Program (PM-M), USACE, 701 San Marco Blvd, Jacksonville, FL 32207. If the undersigned attempts to terminate or revoke this Right-of-Entry before the end of the period provided in paragraph 2, above, without the required notice period stated in this paragraph, the Government will be entitled to recover from the undersigned all damages incurred as a result of the early termination of access to the property, including all contractor costs and any other expenses of the Government incurred because of the unanticipated early termination.

Signed this 7 day of February 2023
(day) (month) (year)

Mailing Address: COUNTY MANAGER
2725 JUDGE FRAN JAMIESON WAY

VIERA, FL 32940

Telephone: (321) 633-2001

Email: FRANK.ABBATE@BREVARDFL.GOV

OWNER(S) [type in full business name]

Signature: 

Print Name: FRANK ABBATE, COUNTY MANAGER

Signature: _____

Print Name: _____

Exhibit A



REMEDIAL INVESTIGATION/FEASIBILITY STUDY



JULY 2020

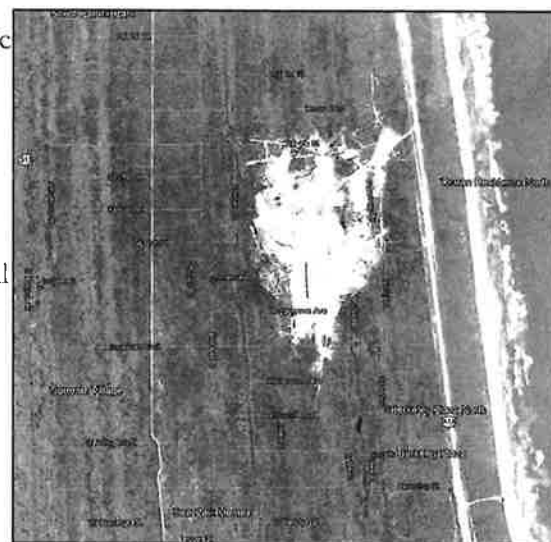
DEFENSE ENVIRONMENTAL RESTORATION PROGRAM FOR FORMERLY USED DEFENSE SITES

Across the country, the Department of Defense acquired properties, often during times of war, to use for military training, testing and demonstrations. When no longer needed, many of these properties were cleaned up according to the best practices available at the time and then transferred to other owners such as private individuals or other government entities. These Formerly Used Defense Sites can range from privately owned farms to National Parks. They also include residential, industrial and educational properties. The Department of Defense is committed to protecting people and the environment and improving public safety by cleaning up these sites if hazards from the former military operations remain. The Defense Environmental Restoration Program for Formerly Used Defense Sites was established to evaluate and, if necessary, to remediate Formerly Used Defense Sites. The U.S. Army Corps of Engineers (Corps) manages the program on behalf of the Department of Defense.

Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund, in 1980 and the Superfund Amendments and Reauthorization Act in 1986. These laws give the Corps the authority for certain cleanup activities and dictate the process we must follow. The Corps conducts investigations to determine the potential risk to people and the environment from the military's use of the property. Public involvement and community participation are important components of the process. We partner with stakeholders throughout the process, including congressional representatives, state and local governments, regulatory and environmental agencies, and affected property owners.

BACKGROUND

The Navy acquired 1,823 acres of land between the Banana River and the Atlantic Ocean and began constructing a seaplane base in 1939. The Navy commissioned the base Naval Air Station Banana River on October 1, 1940. With the United States entrance into World War II, air crews began anti-submarine patrols of the Atlantic Ocean, and in March 1942, the Navy established a photographic laboratory and a navigation school. Naval Air Station Banana River was also home to a blimp squadron which conducted search and rescue along Florida's east coast. During this time, the Navy utilized land south of the base for disposal activities. After World War II ended, the base continued limited operations as a support facility but was deactivated August 1, 1947. The Navy transferred Banana River to the Air Force on September 1, 1948; it is now Patrick Air Force Base and is not eligible for the Formerly Used Defense Sites program. The Off-Base Disposal Area is eligible.



December 8, 1947 aerial image over current map

ENVIRONMENTAL INVESTIGATIONS

In October 2018, the Corps began re-evaluating a portion of the property now known as the South Patrick Shores Subdivision to determine if the military acquired or used any part of the area. Research teams were able to locate various letters and memoranda not previously available indicating that during the construction of the base, the Navy began using an area south of the base for disposal activities. As the Navy prepared to deactivate the base, teams from the Navy's public works department sought to restore the disposal area to the property owner's satisfaction. They burned all of the trash and other debris and buried what remained. Those documents show that while the Navy did not own the property, the Navy did "otherwise possess" it which makes the Off-Base Disposal Area

FORMERLY USED DEFENSE SITES | Naval Air Station Banana River Off-Base Disposal Area

eligible for the Formerly Used Defense Sites program. (Please see Site Summary and other fact sheets for more information.)

Based on the results of the Preliminary Assessment, concluding further investigation is warranted, we are seeking funding to conduct a Remedial Investigation/Feasibility Study. The purpose of the Remedial Investigation/Feasibility Study is to characterize the nature and extent (what, where, in what amounts) of environmental impacts attributable to the Navy. While we will not know the details of how the investigation will be completed until the contract is awarded and the Work Plan is finalized, we can provide general information for what to expect.

The Corps will need permission from individual property owners to investigate and will send a right-of-entry form to all the property owners within the 52-acre area. Once we have sufficient rights-of-entry to adequately characterize the site, we can plan how to do the fieldwork. We anticipate fieldwork will include some type of geophysical investigation to determine what may be in the ground as well as environmental sampling such as collecting soil and water samples. We may also collect air samples, depending upon the results of the geophysical investigation and soil sampling. Geophysical investigations use equipment over the grass/ground surface to digitally map what is in the ground. The investigation would be conducted in open areas (not under houses). Teams may also need to dig up items detected from geophysical investigations to identify what they are. Regardless of the work done in your yard, the crews will leave the property in the same condition they found it.

The historic photographic analysis indicates possibly up to 52 acres were impacted by the Navy's disposal activities. This does not necessarily mean that debris is buried throughout the 52 acres, nor does it mean that is the only area we will investigate. To ensure that nature and extent is properly characterized, the team will evaluate if we need to "step out" beyond those boundaries to determine if Navy related impacts extend beyond the area previously identified.

Once the fieldwork is finished, the team will analyze the data, complete risk assessments, and prepare a Remedial Investigation/Feasibility Study report. We will summarize the report in a Proposed Plan which will present the Corps' Preferred Alternative to address the results of the investigation. The alternatives can range from No Action (if it is determined there is no risk to people or the environment) to various types of remedial actions. The community will have a minimum of 30 days to review and comment on the Proposed Plan and Preferred Alternative(s). Once the public comment period has concluded, the Corps will formally accept the alternative in a Decision Document. Once the Decision Document is signed, the Corps can implement the selected alternative.

Throughout the process, the Corps will continue to communicate with letters, postcards, emails, fact sheets, meetings, and website updates. We will be sure to notify the community at important milestones, such as when the Remedial Investigation/Feasibility Study contract is awarded, and will provide periodic updates as well.



FOR MORE INFORMATION

US Army Corps of Engineers, Jacksonville District

Toll-Free 800.710.5184

FUDS.Florida@usace.army.mil

www.saj.usace.army.mil/BananaRiver



US ARMY CORPS OF ENGINEERS

REMEDIAL INVESTIGATION/FEASIBILITY STUDY PROCESS



NOVEMBER 2021

DEFENSE ENVIRONMENTAL RESTORATION PROGRAM-FORMERLY USED DEFENSE SITES

The Department of Defense is committed to protecting people and the environment and improving public safety by cleaning up sites if hazards from the former military operations remain. The Defense Environmental Restoration Program for Formerly Used Defense Sites was established to evaluate and, if necessary, remediate Formerly Used Defense Sites. The U.S. Army Corps of Engineers (USACE) manages the program on behalf of the Department of Defense.

Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, in 1980 and the Superfund Amendments and Reauthorization Act in 1986. These laws give USACE the authority for certain cleanup activities and dictate the process we must follow. We conduct investigations to determine the potential risk to people and the environment from the military's use of the property.

This is a very complex site since the Navy's disposal activities were not uniform across the area, and the developers likely moved debris around while constructing homes. As owners have improved their property (landscaping, digging pools, etc.), the conditions have changed further. Based on our interviews with residents, it appears debris could be in one yard but may not be in the one next door. These factors make designing the fieldwork approach challenging.

There are required document reviews within USACE and with the Florida Department of Environmental Protection (FDEP) and local stakeholders/officials. That means each document undergoes a rigorous review and approval process that serves to ensure the quality of the document and compliance with Department of Defense guidance and environmental regulations.

The USACE project delivery team reviews a contractor prepared document to be sure it adequately explains what we know about the site, the applicable regulatory requirements, and the rationale for field sampling efforts and subsequent data evaluation. Once the project team has completed their review and the contractor has responded to the comments, the documents undergo an Independent Technical Review within a different organization at USACE not involved in the day-to-day details of the project. The independent team reviews the document to confirm the proper application of clearly established criteria, regulations, laws, codes, program policies, principles, and professional practices. After the USACE reviews are complete, FDEP and representatives from other government agencies review the documents to ensure state laws and local regulations and concerns are appropriately evaluated. Generally, each organization has 30 days to review and comment on the document. The contractor then has to respond to those comments and revise the document accordingly; this typically takes at least another 30 days. These combined review cycles can take months per document, depending on the complexity and number of comments.

Quality assurance/quality control procedures are also in place for the fieldwork which requires the USACE team to review the contractor's data and either accept it or request additional work. This process ensures that we are making decisions based on accurate data with a good understanding of the environmental conditions at the site.

Generally, the Remedial Investigation/Feasibility Study process can be divided into three phases of activities: pre-fieldwork, fieldwork, post fieldwork. Some of the steps involved in each of these phases are outlined below.

Pre-Fieldwork Steps

- Evaluate site to determine where to investigate
- Request rights-of-entry from property owners
- Adjust fieldwork plan based on granted rights-of-entry
- Determine where geophysical survey should be conducted
- Determine sampling plan: where to sample, how many samples to collect, what type of samples (soil, groundwater, air), what to sample for
- Develop “if then” statements so the contractor can make decisions in the field (i.e. if this condition is met, then do this)
- Develop the Quality Assurance Project Plans (QAPP) which can be thought of as a Work Plan
- USACE prepares the QAPP, then FDEP and other stakeholders review/comment on it; revisions made after reviews

This review/approval process will take several months, and from start to finish, the QAPP/Work Plan stage typically takes one year.

Fieldwork Steps

- *Geophysical Survey:*
 - ◊ Conduct geophysical surveys to define location of disposed material; depending on site size and complexities, this could take weeks or months
 - ◊ Evaluate data to determine if “step outs” and/or additional fieldwork (fill in data gaps, etc.) are needed to locate limits of disposed material
 - ◊ USACE Quality Assurance geophysicist evaluates the contractor’s data to ensure all Data Quality Objectives are met
 - ◊ Dig suspected DoD-related metallic objects identified in geophysical surveys to identify what they are and/or dig test pits to characterize buried debris; depending on the number of items to be investigated, this could take days, weeks, or months; contractors refer to this step as an “intrusive” investigation

After the geophysical survey, the contractor’s and USACE’s geophysicists evaluate the data to determine what objects need to be investigated and to develop a plan to dig them. While they are evaluating the data, they may identify a “data gap” meaning additional data needs to be collected. They may also notice that the data indicates additional surveys are required beyond the area initially investigated (i.e. beyond the 52 acres identified through photographic analysis).

- *Environmental Sampling:*
 - ◊ Collect environmental samples; depending on the number of samples required, this could take several weeks
 - ◊ Send samples to laboratory for analysis; it can take three to six weeks (or more) to receive the analysis from the laboratory
 - ◊ Validate laboratory data and determine if additional samples are required (“step out”/bounding samples around exceedances); this typically takes a couple of months
 - ◊ USACE chemist evaluates sampling data to ensure data quality
 - ◊ Collect environmental samples in different seasons in the event that aspect impacts potential contamination (sampling about six months apart)
 - ◊ Depending on the results of the soil sampling, crews may need to return to the site to collect more soil samples, possibly deeper than a sample where something was detected above environmental regulatory criteria or additional samples around the location where an exceedance was detected.
 - ◊ Depending on the results of the soil sampling, crews may need to install groundwater monitoring wells; when wells are installed, the team has to wait for a period of time to collect samples since the act of installing the well disturbs the groundwater and could impact accuracy of any data collected. Groundwater samples may be collected in different seasons.
 - ◊ Depending on the results of the groundwater sampling, additional samples may need to be collected and/or more wells installed.
 - ◊ Environmental samples are usually collected after the geophysical and intrusive fieldwork, since that influences where samples need to be collected. Even though at this site, samples will likely be collected where debris was not found, the team will need to focus samples where debris is found.

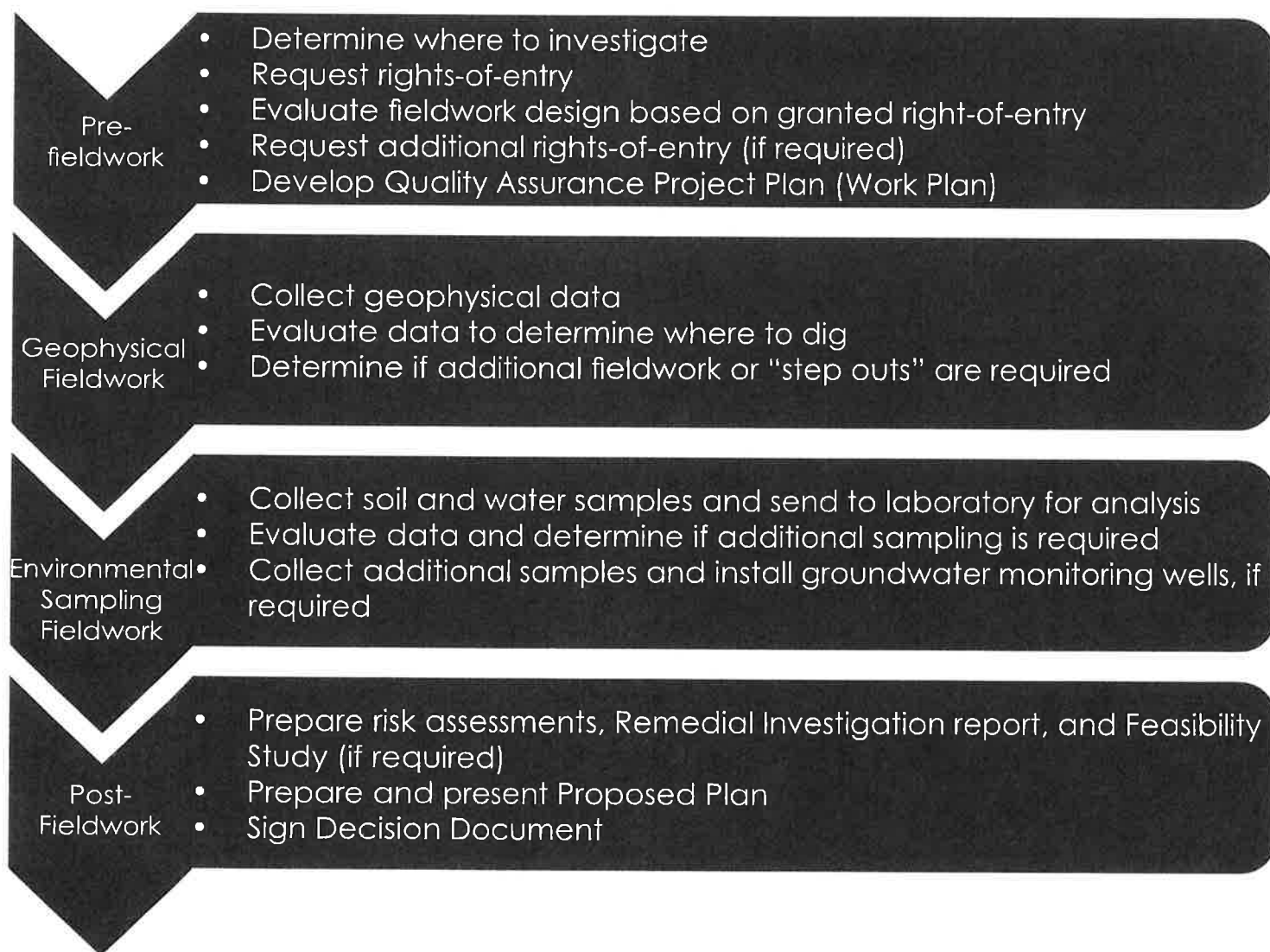
FORMERLY USED DEFENSE SITES | Naval Air Station Banana River Off-Base Disposal Area

• *Fieldwork/Sampling Conclusion:*

- ◊ USACE will present the fieldwork data to stakeholders including local officials and FDEP.
- ◊ Note that weather events can impact fieldwork (i.e. may need to leave if hurricane forecasted to hit near site).
- ◊ The different steps required for fieldwork and data validation (both geophysical/intrusive and environmental sampling) and the need to collect data in different seasons (summer and winter), means it could take a year or longer for fieldwork.

Post Fieldwork Activities

- Evaluate all fieldwork data (geophysical, intrusive, environmental sampling) and prepare risk assessments
- Prepare a Remedial Investigation report that explains the Data Quality Objectives, how the fieldwork was conducted, the results of the fieldwork, revised Conceptual Site Model (based on fieldwork results), and human and ecological risk assessments
- Based on the results of the Remedial Investigation, prepare a Feasibility Study, if necessary, to evaluate alternatives to address what was found. Alternatives could range from No Action (if risks to people and the environment are below established risk levels), to Land Use Control (such as fencing, public awareness materials), to Remedial Action.
- The Remedial Action would be specific to what was found and could include activities such as removing contaminated soils and treating contaminated groundwater.



FORMERLY USED DEFENSE SITES | Naval Air Station Banana River Off-Base Disposal Area

- After the contractor has prepared the Remedial Investigation/Feasibility Study reports, the reports are reviewed as noted previously.
- Once the reports are finalized, USACE will prepare a Proposed Plan which identifies the "Preferred Alternatives." The Preferred Alternative is the alternative, evaluated in the Feasibility Study, that USACE has determined is the best method to address the results of the Remedial Investigation and risk assessments. We may need to divide the site into different sub-areas based on the results of the fieldwork, with each sub-area having a different Preferred Alternative.
- As with the other documents, there is a review period before the document can be presented to the community.
- We will present the Proposed Plan at a public meeting, and the community has a minimum of 30 days to comment on the Proposed Plan.
- After the public comment period is over, USACE prepares a Decision Document which is the official mechanism for the Department of Defense to select the appropriate alternative to address the project site. Again, there is a review process for this document before it is signed.

If usually takes at least five years to complete all these steps and activities.



FOR MORE INFORMATION

Contact:

U.S. Army Corps of Engineers, Jacksonville District
Toll-Free 800.710.5184
FUDS.Florida@usace.army.mil
www.saj.usace.army.mil/BananaRiver

Visit:

Project documents can be viewed at:
Satellite Beach Library
751 Jamaica Boulevard
Telephone: 321.779.4004





BOARD OF COUNTY COMMISSIONERS

Public Works Department

2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

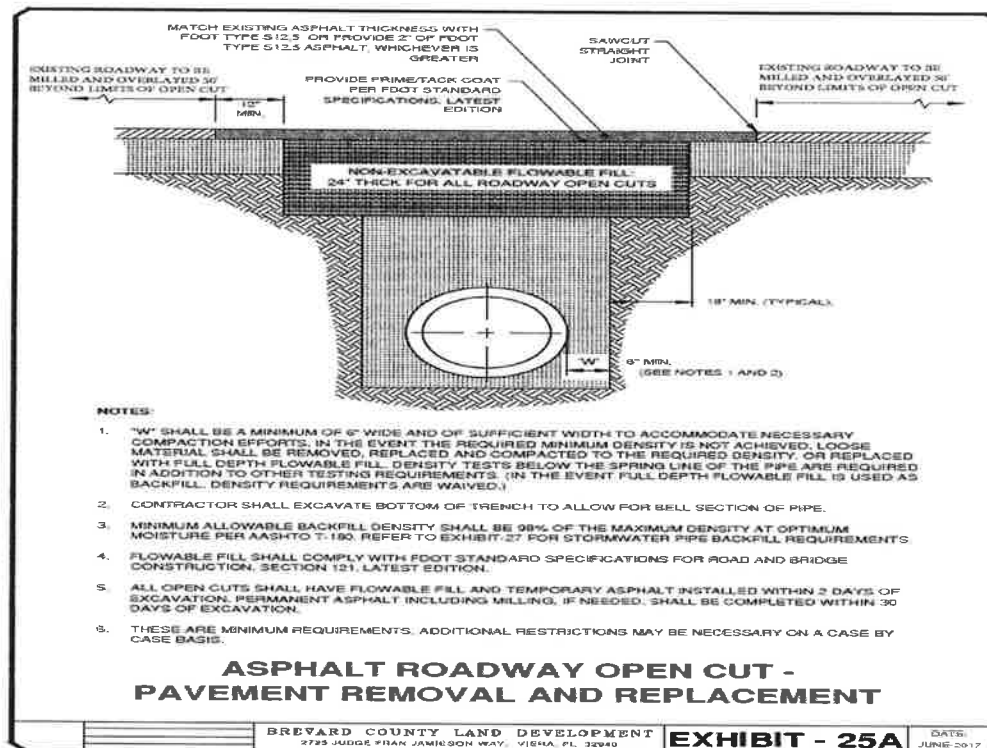
To Whom it May Concern,

While it is the desire of County Staff to help expedite the Naval Air Station Banana River Off-Base Disposal Area Remedial Investigation / Feasibility Study ("FUDS Study") to be brought before the Board of County Commissioners soonest, we remain concerned with the Right-of-Entry form provided in its current form. The County's concerns are similar to that of Brevard Public Schools. Therefore, the County is requesting similar considerations via a supplemental letter as those afforded to Brevard Public Schools. Specifically:


- 1) The County is requesting that staff from the Brevard County Public Works Department be present during any testing performed, subject to the need for the Corps and its contractor to implement the Accident Prevention Plan ("APP") and Uniform Federal Policy for Quality Assurance Project Plan ("UFP-QAPP") to limit County presence due to unsafe conditions. A copy of the APP and UFP-QAPP will be made available to the County prior to the start of field work. Based on the amount of County-owned property within the area to be studied, the Corps or its contractor shall provide no less than two weeks advance notice for the work to be conducted.
- 2) With respect to public relations, the area that will be part of the FUDS Study is both commercial and residential in character. The County is responsible for ensuring that its existing infrastructure, including roadways and public utilities, which may be impacted by certain activities as part of the FUDS Study, remains functional to the general public.
 - a. In order to limit such impacts and preemptively address concerns from residents, business owners, and the general public, the County is requesting that the Corps communicate directly with the Director of Public Works Department (Marc Bernath – marc.bernath@brevardfl.gov), Director of Natural Resources Management (Virginia Barker – virginia.barker@brevardfl.gov) and designated staff members (Rachel Gerena, Engineering Manager – rachel.gerena@brevardfl.gov; Christine Verrett, Special Projects Coordinator III – christine.verrett@brevardfl.gov) as it relates to work in the designated area(s).
 - b. The County is requesting support via briefings and Question and Answer and/or Frequently Asked Question handouts.
 - c. With the Corps consent, the County will encourage those asking questions to directly contact the Corps.
 - d. County personnel interested in keeping up-to-date with the project will send an email to FUDS.Florida@usace.army.mil in order to be added to the email distribution list.

BOARD OF COUNTY COMMISSIONERS

- 3) The County is requesting that any damage caused to the County's property as a result of any work conducted under the Right-of-Entry be repaired, replaced, or otherwise returned to its pre-investigation condition to the standards established under the Brevard County Code and Florida Department of Transportation standards, including, but not limited to, the asphalt roadway open cut – pavement removal and replacement attached hereto.



- 4) While it is understood this is largely a study, there is language in the Right-of-Entry form regarding "digging test pits and/or selected objects". The County requires the Corps to submit a plan for the County's review and concurrence regarding its official notification and coordination process with the County as well as how it plans to address/remediate any contamination in the event it is uncovered during this phase.

Sincerely,

 Marc Bernath
 Public Works Director



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207-8175

January 13, 2023

Programs and Project Management Division
Military/Interagency and International Services Branch

Mark Bernath
Public Works Director
Brevard County
Building A Room 201
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Dear Mr. Bernath:

The U.S. Army Corps of Engineers (Corps) has evaluated Brevard County's concerns on the right-of-entry form for the Naval Air Station Banana River Off-Base Disposal Area Remedial Investigation/Feasibility Study. The following paragraphs list Brevard County's concerns, provided via email on December 13, 2022, in bold followed by the Corps response.

1. **The County is requesting that staff from the Brevard County Public Works Department be present during any testing performed, subject to the need for the Corps and its contractor to implement the Accident Prevention Plan ("APP") and Uniform Federal Policy for Quality Assurance Project Plan ("UFP-QAPP") to limit County presence due to unsafe conditions. A copy of the APP and UFP-QAPP will be made available to the County prior to the start of field work. Based on the amount of County-owned property within the area to be studied, the Corps or its contractor shall provide no less than two weeks advance notice for the work to be conducted.** Brevard County staff may be present during investigation field work within the county right-of-way as requested. The Corps requested and received the Florida Department of Environmental Protection's concurrence with starting the geophysical investigation (ground penetrating radar) while regulatory review of the complete UFP-QAPP continues. The Corps will publish an abbreviated UFP-QAPP (with APP) and host a drop-in community meeting prior to the start of field work. As stated in the right-of-entry form, the Corps will coordinate activities at least fourteen days prior to the start of work.
2. **The County is requesting that the Corps communicate directly with the Director of Public Works Department, the Director of Natural Resources Management, and designated staff members as it relates to work in the designated area(s).** The Corps will communicate directly with the personnel identified.
3. **The County is requesting support via briefings and Question and Answer and/or Frequently Asked Question handouts. With the Corps consent, the County will encourage those asking questions to directly contact the Corps. County personnel interested in keeping up-to-date with the project will send an email to FUDS.Florida@usace.army.mil in order to be added to the email distribution list.**

The Corps can provide support via briefings and Question and Answer and/or Frequently Asked Question handouts. Such materials are already posted on the project website, and others will be added as necessary. We agree that those with questions should contact us directly. The Corps is responsible for communicating with the general public, and we focus our communication toward those who own property within the Off-Base Disposal Area and those who have requested to be kept informed. We communicate via email (for those who requested emails) and U.S. mail. The project website is www.saj.usace.army.mil/BananaRiver. We can be reached directly at 800-710-5184 or FUDS.Florida@usace.army.mil.

4. **The County is requesting that any damage caused to the County's property as a result of any work conducted under the Right-of-Entry be repaired, replaced, or otherwise returned to its pre-investigation condition to the standards established under the Brevard County Code and Florida Department of Transportation standards, including, but not limited to, the asphalt roadway open cut – pavement removal and replacement [specifications].** Subject to the terms and conditions in the right-of-entry form, the Corps will restore property to the pre-investigation condition and will consider specifications and standards such as those from the Brevard County Code and Florida Department of Transportation.
5. **While it is understood this is largely a study, there is language in the Right-of-Entry form regarding "digging test pits and/or selected objects". The County requires the Corps to submit a plan for the County's review and concurrence regarding its official notification and coordination process with the County as well as how it plans to address/remediate any contamination in the event it is uncovered during this phase.** Brevard County can review and provide comments for Corps consideration on project documents as they are made available to the public. The investigation is being conducted in accordance with the National Contingency Plan (NCP) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Corps is the lead executing agency for the Formerly Used Defense Sites (FUDS) program, as such the Corps is not required to obtain concurrence from property owners in conducting environmental responses.

Digging test pits and/or selected objects is necessary to characterize the nature and extent of military-related impacts during the Remedial Investigation phase. Once the field work is complete, the Corps will analyze the data and prepare a Remedial Investigation report which includes human health and ecological risk assessments. Should the data indicate unacceptable risk to human health and/or the environment, the Corps will prepare a Feasibility Study to evaluate remedial alternatives. The Corps will summarize the Remedial Investigation/Feasibility Study (if required) in a Proposed Plan which will summarize the field work results and present the Preferred Alternative. Brevard County (and the public) will have a minimum of 30 days to comment on the Proposed Plan. Following the Proposed Plan public comment period, the Corps will prepare a Record of Decision with the selected remedy.

The Corps communications with property owners and the public is guided by our Community Relations Plan. The plan is available on our public website at www.saj.usace.army.mil/BananaRiver.

If you have any questions regarding this letter or other project related matters, please contact me at Andrew.J.Rebman@usace.army.mil or 904-232-1430.

Sincerely,

REBMAN.ANDRE
W.J.1376729431

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Andrew J. Rebman
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