



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.6.

5/27/2021

Subject:

Approval, Re: Department of the Army Right-of-Entry for Environmental Assessment and Response (District 4)

Fiscal Impact:

None

Dept/Office:

Parks and Recreation Department

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the Department of the Army Right-Of-Way Entry for Environmental Assessment and Response for South Patrick Community Park and any other Army requested County owned property within the Naval Air Station Banana River Off-Base Disposal Area.

Summary Explanation and Background:

Brevard County owns and operates South Patrick Community Park located at 189 Sea Park Blvd., Satellite Beach, FL.

Per the correspondence dated May 5, 2021 from the Department of the Army, South Patrick Community Park "may be within or near the former Naval Air Station Banana River Off-Base Disposal Area, a Formally Used Defense Site (FUDS)". The correspondence further indicates that the "U.S. Army Corps of Engineers (Corps) is responsible for evaluating, and if necessary, remediating, environmental impacts from the Off-Base Disposal Area.... [and] [t]o complete the Remedial Investigation... access... [to the] ... property... to perform the work described" is required. The work activities that may be part of the Remedial Investigation fieldwork include using different types of equipment to search for buried debris, digging up selected objects to identify them, and collecting environmental samples. The Department of the Army has requested that a response be made on or before June 11, 2021.

South Patrick Community Park property was the only Brevard County Board of County Commissioners site identified in the Off-Site Disposal Area but, in the event additional Brevard County sites are identified, it is requested that the Chair be authorized to sign any additional Right-Of-Entry for Environmental Assessment and Response requests from the Department of the Army.

Clerk to the Board Instructions:

Please have the Chair sign the Right-Of-Entry for Environmental Assessment and Response and return to Mary Ellen Donner, Parks and Recreation Department.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

May 28, 2021

MEMORANDUM

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.6., Approval of Department of the Army Right-of-Entry for Environmental Assessment and Response

The Board of County Commissioners, in regular session on May 27, 2021, approved and authorized the Chair to execute the Department of the Army Right-of-Entry for Environmental Assessment and Response for the South Patrick Shore Community Park and any other Army requested County-owned property within the Naval Air Station Banana River Off-Base Disposal Area; and directed staff to send an email to the Army Corp of Engineers inquiring as to the nature of the technology they plan on using and depending on the response, if it is appropriate, bring it back to the Board for further discussion. Enclosed is an executed Department of the Army Right-of-Entry for Environmental Assessment and Response.

Upon execution by all parties, please return the fully-executed Right-of-Entry to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/ns

Encl. (1)

DEPARTMENT OF THE ARMY
RIGHT-OF-ENTRY FOR ENVIRONMENTAL ASSESSMENT AND RESPONSE

Defense Environmental Restoration Program,

Site Number: I04FL0027

Project, Installation or Activity

NAS Banana River Off-Base Disposal Area, Brevard County, Florida

Tract Number or Other Property Identification

The undersigned, herein called the "Owner," in consideration for the mutual benefits of the work described below, hereby grants the UNITED STATES OF AMERICA, hereinafter called the "Government," a right-of-entry upon the following terms and conditions:

1. The Owner hereby grants to the Government right to enter in, on, over and across the land described in Paragraph 5, for use by the United States, its representatives, agents, and contractors, and assigns, as a work area for environmental investigation and response. Work to be performed may include searching for evidence of military-related debris using geophysical equipment and digging selected objects to identify them as well as 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; and performing any other such work which may be necessary and incident to the Government's use for the Remedial Investigation and response on said lands; subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), their heirs, executors, administrators, successors and assigns, all such right, title, interest, and privilege as may be used and enjoyed without interfering with or abridging the rights and right-of-entry hereby acquired. Said right-of-entry shall remain in effect until the completion of this work or a period not to exceed five (5) years beginning with the date of the signing of this instrument, whichever is first, at which time it will expire automatically.
2. The Owner also grants the right to enter and exit over and across any other lands of the Owner as necessary to use the described lands for the purposes listed above.
3. All tools, equipment, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit of right-of-entry.
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. The lands affected by this right-of-entry are located in Brevard County, Florida and are described as follows: all of the tract or parcel of land lying and being in and specifically identified as Parcel Number 26-37-23-00-501 in the records of the Brevard County's Property Appraiser's Office, also known as 249 Sea Park Boulevard, Satellite Beach, Florida.

Signed this 27 day of May, 2021

Mailing Address:

2725 Judge Fran Jamieson Way, Bldg. B,

Ste. 203, Viera, FL 32940

Telephone: 321-633-2046

Email: Maryellen.donner@brevardfl.gov

OWNER(S) [type in full business name]

Signature: 

Print Name: Rita Pritchett, Chair

Signature: 

Print Name: Rachel M Sadoff

UNITED STATES OF AMERICA

By: _____

TIMOTHY H. MCQUILLEN

Real Estate Contracting Officer

Chief, Real Estate Division

Executed this _____ day of _____ 2021

As Approved by the Board on May 27, 2021



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

May 5, 2021

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

SUBJECT: Property within the former Naval Air Station Banana River Off-Base Disposal Area
Parcel Number 26-37-23-00-501, 249 Sea Park Boulevard

Mary Ellen Donner, Director
Parks and Recreation Department
Brevard County
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Dear Ms. Donner:

According to our records, your property may be within or near the former Naval Air Station Banana River Off-Base Disposal Area, a Formerly Used Defense Site (FUDS). Historic records and letters indicate the Navy used the area while the base was active (between 1942 and 1947) to burn trash and other debris and buried what remained.

The U.S. Army Corps of Engineers (Corps) is responsible for evaluating, and if necessary, remediating, environmental impacts from the Off-Base Disposal Area. We awarded a contract on March 17, 2021, to begin the Remedial Investigation/Feasibility Study to determine the nature (what) and extent (where) of impacts attributable to the Navy's disposal activities in the 1940s. A Feasibility Study, if required, evaluates alternatives to address hazards the team identifies in the Remedial Investigation. We anticipate holding a meeting to provide more information about the process and will share the meeting details at least two weeks before the meeting. Please visit the project website for the Remedial Investigation/Feasibility Study process fact sheet.

In order to complete the Remedial Investigation, we need your permission to access your property. The enclosed form grants the Government, its representatives, agents, contractor, and subcontractors, permission to enter the specified property to perform the work described. Please fill in the requested information at the bottom of the form, sign, and date it. Please return the entire page to us in the enclosed envelope or email it to FUDS.Florida@usace.army.mil by June 11, 2021, and please consider asking your neighbors to also return their right of entry form, as we need a sufficient number of responses to adequately investigate the former disposal area. We will send you an executed copy. See the enclosed Right-of-Entry Questions and Answers fact sheet for more information.

We understand the importance of having the public actively participate in the remedial process and are evaluating public interest in a Restoration Advisory Board. The board would include members of the impacted community, local government representatives, environmental agency representatives, and the USACE project manager. Board members would review and comment on plans and technical documents related to the environmental studies and restoration activities. Members would serve as voluntary liaisons between the community and The Corps and would receive no compensation. We will continue to keep the public informed throughout the process even if a Restoration Advisory Board is not formed. If you are interested

- 2-

in serving on the board, if established, and live, work, or own property within the 52-acre Off-Base Disposal Area, please fill out the enclosed Community Interest Form and mail or email it to us by June 11, 2021.

The project documents that are used to determine the appropriate course of action (collectively referred to as an Administrative Record file) will be available on the project website (www.saj.usace.army.mil/BananaRiver) and at Satellite Beach Library (751 Jamaica Boulevard).

For more information, please call 800.710.5184, email FUDS.Florida@usace.army.mil, or visit the project website (www.saj.usace.army.mil/BananaRiver).

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Keiser', with a stylized flourish at the end.

John E. Keiser, PE
Program Manager, Formerly Used Defense
Sites Military/Interagency and International
Services Branch Programs and Project
Management Division

Enclosures

Right-of-Entry Questions and Answers



May 2021

Will I be notified before you show up?

Yes. We will send out a letter or postcard no less than two weeks before the teams will be on-site conducting fieldwork. The teams will also place a notice on your door at least two days before they work on your property; the notice will specify the date and time teams plan to work on your property.

If I will not be home the day you come, will this be an issue?

You do not need to be home when the team is working on your property. We do request you unlock any gates and secure pets prior to the teams arriving.

Can work be rescheduled so that I can be home when work is being done on my property?

While we will coordinate with property owners to the best of our abilities, the teams need to work as expeditiously as possible and may not be able to reschedule the work planned for a particular parcel.

Can I specify where to search and/or what work is done on my property?

If you have specific information you want to share about your property, please call us at 800.710.5184 or email FUDS.Florida@usace.army.mil so that we may consider that information in the development of our investigation plan. The teams conducting the fieldwork will need to collect samples and/or conduct geophysical investigations in accordance with the Quality Assurance Project Plan (QAPP) that we generally refer to as a Work Plan.

Will I be able to ask the team questions while they're working on my property?

To allow the teams to focus on their work, we request you do not direct questions to them. Please call 800.710.5184 or email us at FUDS.Florida@usace.army.mil.

How long will the fieldwork take?

The length of time to complete the activities will depend on what the team is doing, and the team may need to return to your property on multiple occasions throughout the Remedial Investigation process.

What happens if your contractor is injured on my property?

The contractor is fully bonded and insured, and they are responsible for protecting their employees. The contractor and all those working on the project will at all times exercise due care for their own personal safety and the safety of others on the property. The contractor is responsible for any lighting, traffic control, security, or other measures necessary for the safe conduct of the activities.

Why do I have to sign the right-of-entry form?

The right-of-entry form provides the necessary documentation that the property owner is granting the Government and its contractor permission to enter the property to conduct the activities described in the first paragraph of the form.

If I do not sign the form, will you search my property?

We will not investigate any property without a signed right-of-entry form. If we do not receive a sufficient number of signed rights-of-entry, it could delay our work and impact our ability to fully characterize the nature (what) and extent (where) of military-related debris.

What will you do on my property if I sign the form?

The right-of-entry form identifies activities that may be part of the Remedial Investigation fieldwork, but that does not necessarily mean each activity listed will be conducted on every parcel. The form needs to be sufficiently broad to allow

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

flexibility for the teams conducting the fieldwork. Activities that may be part of the Remedial Investigation fieldwork include using different types of equipment to search for buried debris, digging up selected objects to identify them, and collecting environmental samples. We will be able to provide more specific details for individual properties once the Work Plan has been developed.

Will you come inside my home?

Initially, none of the fieldwork will require access inside homes. Should initial soil or groundwater sampling data indicate indoor air quality sampling is required, the Corps of Engineers will contact individual homeowners to discuss that sampling process.

Will you compensate me for signing the right-of-entry form?

The Formerly Used Defense Sites program is not authorized to compensate people for signing a right-of-entry form.

Will you fill in holes you create and/or repair any damage to my landscaping?

The contractor will fill any holes they create from collecting samples or digging up objects to identify them, remove any debris they discover during sampling, and clean-up the area where they were working. The teams will take before and after photographs to be able to document how they restored your property. If any action of the contractors in the exercise of this right-of-entry results in damage to the real property, the Government will either repair the damage or make an appropriate settlement with the Owner. If you suspect our teams damaged your property, please contact us at 800.710.5184 or FUDS.Florida@usace.army.mil.

How soon will you start searching my property after I sign the right-of-entry?

While we are requesting rights-of-entry now so the contractor will know where they can search, the actual fieldwork cannot begin until we have a sufficient number of signed right-of-entry forms and after the Work Plan is finalized, which could take up to a year.

Why is the right-of-entry for five years?

The length of the right-of-entry allows sufficient time to receive signed right-of-entry forms, analyze where we have permission to search, finalize the Work Plan, and then to implement the phased, scientific approach that allows us to collect all the necessary data where needed to thoroughly investigate the Off-Base Disposal Area.

What is this phased approach?

The fieldwork will be conducted in a phased approach. The teams will likely conduct the geophysical mapping first. After that phase is complete, the teams will need to analyze the data to plan and refine the next phase. They will then collect environmental samples, and based on the sampling data, they may need to return to the property to collect more samples. The contractor may need to install wells to collect groundwater samples, and they may need to dig up metallic objects to identify what they are or "test pits" to assess buried material. It is possible some phases may need to be repeated.

I may want to sell my property. Does signing the form prohibit or limit that?

Signing a right-of-entry in no way limits your rights to use your property as you choose nor does it impact your ability to sell it. We do request if you sell the property to notify us so that we can request a right-of-entry from the new owner.

I do not like the wording in the right-of-entry form. Can I change it?

The U.S. Army Corps of Engineers' Engineer Regulation for Formerly Used Defense Sites specifies the wording for the right-of-entry form, and we have very limited ability to make changes. If you have concerns, please contact us to discuss it (800.710.5184).

My property is not within the Off-Base Disposal Area, but I want to sign a right-of-entry so you can search it.

At this time, we are only authorized to investigate the 52-acre Off-Base Disposal Area. It is possible we may need to "step out" and search beyond the 52-acre area in order to confirm the extent of military-related debris. If that is required, we will request additional rights-of-entry in those areas.



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

Documents are available at:

Satellite Beach Public Library

751 Jamaica Boulevard

Telephone: 321.779.4004



US ARMY CORPS OF ENGINEERS

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Department of the Army		2. Amount: \$0
3. Fund/Account #: N/A	4. Department Name: Parks and Recreation	
5. Contract Description: Right of Entry for Environmental Assessment and Response - Department of the Army		
6. Contract Monitor: Melissa Renninger		8. Contract Type: USE AGREEMENT <input type="checkbox"/>
7. Dept/Office Director: Mary Ellen Donner		
9. Type of Procurement: Other <input type="checkbox"/>		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Adams, MistyS

Digitally signed by Adams, MistyS
Date: 2021.05.19 14:20:28 -04'00'

Purchasing

☐
☐

Risk Management

☒
☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2021.05.19 14:35:49 -04'00'

County Attorney

☒
☐

Allen May 19, 2021

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete <input checked="" type="checkbox"/>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>