

***FUDS Site Access Letter Agreement for Non-Intrusive PA/SI under the Military Munitions Response Program. The standard language in these letters will not be substantively deviated from without the mutual agreement of both parties by authorized officials.***

[Insert date]

[Insert appropriate Department]  
[Insert appropriate bureau/agency]  
[Insert address]

Re: [Insert FUDS name and location]

Dear [insert name of appropriate official within the U.S. Department of the Interior or Agriculture]:

Our respective staffs have been in contact regarding the conduct of a non-intrusive preliminary assessment and/or site inspection (PA/SI) of Department of Defense (DoD) contamination at the Formerly Used Defense Site (FUDS) [insert FUDS name and location], which is on lands managed by your agency. The U.S. Army Corps of Engineers (Corps) seeks entry upon federal lands associated with this site to facilitate the non-intrusive PA/SI pursuant to the Defense Environmental Restoration Program. The Corps is conducting site inspections of FUDS with the potential for military munitions nationwide pursuant to Congressional direction. (2007 National Defense Authorization Act, Pub. L. 109-364.) A non-intrusive PA/SI may consist of the following activities: on-site record review; a visual inspection of the property, including footprint analysis and geophysical mapping; groundwater sampling from existing wells; a survey with metal detector or other instruments to detect surface and subsurface munitions; spatial analysis and aerial surveys; and the collection of surface soil and surface water samples.

The Corps will coordinate with your agency point of contact (POC) at the site pursuant to the enclosed Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands (Statement of Principles).

The Corps invites your agency to actively participate in the Technical Project Planning (TPP) process and proposes to schedule a TPP meeting at a mutually convenient time on or around [insert proposed dates]. One principal goal of the TPP is to clearly document project objectives, including federal land manager-specific and site-specific project objectives to ensure efficient progress through the non-intrusive PA/SI. The TPP meeting agenda will include discussion of proposed activities, including the project schedule and additional meeting dates, the proposed area(s) to be surveyed and identification of sampling locations, equipment to be used, number and types of vehicles, number of people involved, and the name(s) of contractor(s). Project planning will seek to minimize conflicts with seasonal activities and other site-specific and local concerns as identified by your agency POC, such as mating, nesting and breeding seasons for

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sensitive species, archeological, historic, and culturally sensitive areas, and peak visitation. Before the Corps may begin work at the Site, your agency POC shall be given the opportunity for meaningful review and comment on the PA/SI work plan and the Corps will respond to any issues or concerns of your agency POC.

The Corps and the [insert appropriate bureau or agency] have a mutual interest in addressing any DoD contamination at the site. We will operate pursuant to the terms negotiated by our respective Department Headquarters as summarized below, in accordance with the Statement of Principles and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process, and the following terms:

1. The Parties will coordinate at the site as provided in the Statement of Principles and the non-intrusive PA/SI will be conducted in accordance with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. The Statement of Principles provides for coordination on the conduct and performance of site assessment work on lands under FLM management, and for the Corps and federal land managers to seek mutual agreement on significant cleanup decisions. To facilitate such mutual agreement, the Corps shall provide to the facility POC an opportunity for meaningful consultation, review, and comment on assessment and cleanup proposals for significant cleanup decisions.
2. The Corps will provide your agency POC reasonable prior notice of, and an opportunity to participate in, significant meetings and conference calls related to the PA/SI.
3. The [insert appropriate bureau/agency] will coordinate to allow the Corps access to conduct the PA/SI. To ensure that the Corps is aware of current and future land uses and important resource issues at the Site, and considers such land uses and resources in conducting its PA/SI and making determinations regarding further action, the [insert appropriate bureau/agency] will provide the Corps with its statement of current and future land use and important resource issues for Corps review and comment. The [insert appropriate bureau/agency] will provide the Corps reasonable prior notice of, and an opportunity to participate in significant meetings and conference calls related to any [insert appropriate bureau/agency] actions that might impact Corps activities at the site.
4. With respect to the archaeological, cultural, historic preservation, and natural resource issues, and consistent with the TPP, the Corps agrees to consult and coordinate with your agency POC, the [insert appropriate State department of historic resources], and other stakeholders in accordance with CERCLA and the NCP. The Corps and your agency POC will agree on appropriate access and egress routes prior to Corps entry in order to prevent any unnecessary

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impacts to archaeological, cultural, historic preservation or natural resources. The Corps' archaeological, cultural, historic preservation and natural resource activities shall be conducted at the Corps' expense and limited to those actions necessary for the conduct of CERCLA response actions or the protection of natural and archeological, cultural and historic preservation resources during the non-intrusive PA/SI. The [insert appropriate bureau/agency] will provide consultation, liaison and other support.

5. As an agency of the United States, the Corps is limited by federal law as to the assumption of liability for its acts or omissions. The Corps agrees, within its legal limitations and limitations of appropriations, to be responsible for claims arising out of the Corps' non-intrusive PA/SI activities. The Corps further agrees, to the extent legally permissible, to use its authorities as required by law for claims and repair of damages associated with such activities. The Corps is obligated to follow the requirements of the Federal Acquisition Regulations (FAR), including incorporating mandatory contract provisions addressing contractor liabilities and responsibilities for the conduct of work in general and specifically on federal property.
6. Notwithstanding statements within this letter, nothing herein confers any liability upon the [ Insert appropriate bureau or agency] for claims payable by the Corps under the Federal Torts Claims Act. Provided further that nothing in this letter is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this letter.
7. Your agency POC or other designated representative may accompany the Corps or its representatives, agents, or contractors during the PA/SI unless the presence of such representative(s) presents a physical safety hazard.
8. Consistent with the Statement of Principles, disputes will be resolved informally and at the lowest level possible, with elevation to successively higher levels as necessary.

Following completion of the non-intrusive PA/SI, the Corps will provide your agency POC with a draft final PA/SI report, together with the Corps' determination as to whether military munitions are present on the property and proposed future actions to address human and ecological risks, if applicable. [Insert appropriate bureau/agency] shall be given an opportunity for meaningful review and comment and the parties will seek mutual agreement on the PA/SI report and need for future action. If it is determined that additional response actions are needed, including any intrusive or subsurface investigations, the Corps will, consistent with the Statement of Principles coordinate with [Insert appropriate bureau/agency] on future activities at the site.

Please confirm your acceptance of these terms to grant access with the agreed upon

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letter. We look forward to continuing our working relationship with you. Please contact [insert name of Corps FUDS Project POC and phone number, and email address] for any questions or concerns you may have regarding this project.

Sincerely,

District Commander  
USACE

cc: [insert appropriate Department FUDS Coordinator]

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[Insert date]

U.S. Army Corps of Engineers  
District Commander

[Insert address]

Re: [Insert FUDS name and location]

Dear [Insert name of Corps District Commander]:

The [insert appropriate bureau/agency] has received your letter regarding the U.S. Army Corps of Engineer's (Corps) planned non-intrusive preliminary assessment and site inspection (PA/SI) of the above-referenced Formerly Used Defense Site (FUDS) to be conducted pursuant to the Defense Environmental Restoration Program (DERP) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.

By this letter, [insert appropriate bureau/agency] agrees to provide access to the site and to the terms and conditions set forth in your letter. The scope of this site access response is limited to the non-intrusive PA/SI only. The [insert appropriate bureau/agency] will participate in the Corps' Technical Project Planning (TPP) Process and will participate in the PA/SI at the site consistent with the terms described in your letter of [insert date of Corps request letter] and the Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands (Statement of Principles), CERCLA, and the NCP.

If it is determined that response activities or intrusive investigation beyond the non-intrusive PA/SI (including any subsurface sampling) are needed, the Corps and [insert appropriate bureau/agency] will, consistent with the Statement of Principles, reach further agreement providing for coordination and collaborative decision-making before further actions are carried out. The statement of future land use and important resource issues and any additional site specific information necessary for the Corps to carry out the PA/SI at this site are [insert "enclosed" or "will be provided by (specific date)"].

The [insert appropriate bureau/agency] is pleased that the Corps is devoting its FUDS resources to the site. Our [insert appropriate agency/bureau] contact is: [insert appropriate bureau/agency POC and phone number and email]. Please contact this person directly to participate in the TPP Process or if you have any questions or concerns.

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Sincerely,

Appropriate agency/bureau Official

cc: [insert appropriate Department FUDS Coordinator]