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FINAL LAND USE CONTROL REMEDIAL DESIGN SITE 1 MCALLISTER POINT OPERABLE UNIT 1 (OU 1) LANDFILL NS NEWPORT RI

1/1/2018

TETRA TECH

Department of the Navy
Naval Facilities Engineering Command Mid-Atlantic
Norfolk, Virginia

Final
Land Use Control Remedial Design

Site 1 – McAllister Point Landfill, Operable Unit 1

Naval Station Newport
Newport, Rhode Island

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Acronyms and Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
DoD	U.S. Department of Defense
EPA	U.S. Environmental Protection Agency Region I
ERP	Environmental Restoration Program
ESD	Explanation of Significant Differences
FFA	Federal Facility Agreement
GIS	geographic information system
LTM	long-term monitoring
LTMP	Long-term Monitoring Program
LUC	Land Use Control
MIDLANT	Mid-Atlantic
NAVFAC	Naval Facilities Engineering Command
NAVSTA	Naval Station
Navy	U.S. Department of the Navy
NETC	Naval Education and Training Center
NIRIS	Naval Installation Restoration Information Solution
NPL	National Priorities List
NUWC	Naval Undersea Warfare Center
O&M	operations and maintenance
OU	Operable Unit
PAHs	polyaromatic hydrocarbons
PCBs	polychlorinated biphenyls
RAOs	Remedial Action Objectives
RCRA	Resource Conservation and Recovery Act

RD	Remedial Design
RIDEM	Rhode Island Department of Environmental Management
ROD	Record of Decision
RPM	Remedial Project Manager
SWOS	Surface Warfare Officers School

1.0 Introduction

This document constitutes the Land Use Control (LUC) Remedial Design (RD) for Operable Unit (OU) 1 within Site 1, McAllister Point Landfill, at Naval Station (NAVSTA) Newport—formerly the Naval Education and Training Center (NETC), Newport, Rhode Island. NAVSTA Newport was placed on the National Priorities List (NPL) for the United States Environmental Protection Agency Region I (EPA) on November 21, 1989, and was assigned EPA ID Number RI6170085470.

This document was prepared by the Department of the Navy's (Navy) Naval Facilities Engineering Command (NAVFAC) Mid-Atlantic. NAVFAC Mid-Atlantic is the lead agency conducting the evaluation and cleanup of NAVSTA Newport.

The LUC RD was developed to address LUC implementation actions in accordance with the Record of Decision (ROD) for Site 1's source control operable unit (Navy 1993), which is now referred to as OU1, and the NAVSTA Newport Federal Facility Agreement (FFA) (EPA et al. 1992). A second ROD (Navy 2000) was issued for Site 1's marine sediment/management of migration operable unit (OU4), but the remedial action for OU4 has been completed, so it is not included in this LUC RD. This document is considered a primary document in accordance with the FFA, and has been prepared in accordance with the Navy *Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions* (the Navy Principles) as agreed between the EPA and the Department of Defense (DoD) (DoD 2004).

2.0 Background and Description

NAVSTA Newport is located approximately 60 miles southwest of Boston, Massachusetts, and 25 miles south of Providence, Rhode Island. This naval facility consists of approximately 1,400 acres, with portions of the facility located in the City of Newport and the Towns of Middletown, Portsmouth, and Jamestown, Rhode Island. With the exception of Gould Island, which is located in Narragansett Bay, the western boundary of NAVSTA Newport follows the western shoreline of Aquidneck Island for nearly 6 miles, facing the eastern passage of the bay (Figure 1, inset). The major commands currently located at NAVSTA Newport include the Surface Warfare Officers School (SWOS) Command, Naval Undersea Warfare Center (NUWC), and Naval War College. Research, development, and training have been the primary activities at NAVSTA Newport from 1974 to present. The land area surrounding the base consists of medium-density development with municipal, residential, commercial, industrial, and recreational land use to the south and east in Newport and southern Middletown and progressively lower-density residential and agricultural land uses to the east and north in northern Middletown and Portsmouth. NAVSTA Newport was placed on the NPL in 1989 in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

2.1 Site Characteristics

McAllister Point Landfill (Site 1) occupies approximately 11.5 acres. As shown in Figure 1, Site 1 is located in the central portion of the facility and is bounded to the west by Narragansett Bay.

The McAllister Point Landfill at NAVSTA Newport was operated as a sanitary landfill over a 20-year period. From 1955 until the mid-1970's, the site accepted all the wastes generated at the Naval facility, including waste from all operational areas (e.g., machine shops, ship repair, etc.); Navy housing areas (i.e., domestic refuse); and the 55 ships home-ported at Newport prior to 1973 (approximately fourteen 40-cubic yard containers daily). The materials disposed of at the landfill reportedly included spent acids, paints, solvents, waste oils (diesel, lubrication, and fuel), polychlorinated biphenyl (PCB)-contaminated transformer oil, domestic refuse, and construction debris.

During the period of 1955 through 1964, wastes were trucked to the site, spread out with a bulldozer, and covered. In the late 1950's or early 1960's, an incinerator was built at the landfill. From that time through about 1970, approximately 98 percent of all the wastes were burned in the incinerator and the ash and unburned materials were disposed of in the landfill. The incinerator was closed around 1970 due to concern about the resultant air emissions. During the remaining years that the site was operational, all wastes were

again disposed of directly into the landfill. Based on a review of aerial photographs of the site covering the period from 1965 through 1975, a change in the shape of the shoreline in the central portion of the site is evident, indicating filling of Narragansett Bay in this area. After disposal activities ceased in 1973, a three-foot thick cover of clay/silt was reportedly placed over the central portion of the landfill, and the site remained inactive.

Site 1 was one of the operable units (OU1) identified as part of the NPL designation in 1989. Multiple investigations have been performed at OU1, including a remedial investigation (1992), additional groundwater investigation and Human Health Risk Assessment (1994), a Marine Ecological Risk Assessment (1997), and the Management of Migration Feasibility Study (FS) report (1999).

Subsequent investigations of the coastal areas adjacent to the McAllister Point Landfill concluded that landfill materials intermixed with contaminated sediment were present seaward of the landfill along much of its length and extended out as far as 100 feet from the revetment in the central portion of the landfill. Approximately 47 acres of nearshore and offshore areas within Narragansett Bay adjacent to the landfill were found to either contain landfill material, or were contaminated by runoff or marine sedimentation from the landfill before the remedial action for OU4 Remedial Action was completed in 2002. Follow-up eelgrass monitoring was completed in 2004.

The sediment in both the nearshore and offshore areas along the length of the landfill contained PCBs, polyaromatic hydrocarbons (PAHs), and metals at concentrations exceeding benchmark values for adverse ecological effects due to contamination in sediment. Additionally, the nearshore area was found to contain landfill debris, which included materials such as ash, glass, pottery, brick, and metal pieces and larger debris such as large metal pieces, concrete and tangled masses of anti-submarine netting. Sediment monitoring is currently ongoing to confirm the long-term protectiveness of the remedy.

2.2 Remedy

Two separate remedial actions have been implemented at Site 1. First, a stone revetment and a Resource Conservation and Recovery Act (RCRA) subtitle C landfill cap were constructed on the upland portions of the landfill and implemented as part of the source control (OU1) presumptive remedy in 1996. As described above, additional landfill debris was discovered in the intertidal area beyond the landfill boundary during construction of the cap; this discovery then led to further investigations that culminated in a second ROD (signed in 2000), with implementation of a marine sediment/ management of migration (OU4) remedy. The additional landfill debris was removed and sediments were dredged in the nearshore and offshore areas, which were subsequently backfilled and restored. All of the removed material was disposed of at appropriately licensed offsite disposal

facilities. The removal and disposal of this debris and sediment was a part of the OU4 remedial action. Confirmation sampling and a final inspection in 2002 verified that all debris had been removed from the area outside of the landfill boundary.

An Explanation of Significant Differences (ESD) (NAVFAC 2007) was completed in 2007 that described LUCs established for the site. This LUC RD augments that ESD by providing the implementation actions to establish the LUCs for Site 1. The ROD and ESD for OU1 established Remedial Action Objectives (RAOs) and selected the remedy. The remedy as completed in 1996, and as amended by the ESD in 2007, consisted of:

- RCRA Subtitle C multi-layer cap;
- Landfill gas management;
- Surface controls;
- LUCs including fencing (engineering controls) and institutional controls;
- Additional Site Investigations;
- Post-closure monitoring and maintenance; and
- Review of the site every 5 years to assess the protectiveness of the remedy.

2.3 LUC Boundaries

The OU1 ROD (Navy 1993) approximated the area over which the LUCs would apply to prevent human exposure to contaminated soil/waste and land use restrictions to prevent potable use of the groundwater. This area has been refined from the conceptual boundaries presented in the ROD based on the remedial design and remedial action, as evidenced by the as-built drawings presented in Appendix A of the Post-Closure Monitoring and Maintenance Plan for Site 1 (NAVFAC 2016). The area will be referred to in this LUC RD as the "OU1 LUC Area." The boundary of the OU1 LUC Area, shown on Figure 2, is now identical to the Site 1 boundary.

3.0 Land Use Controls

LUCs are used at sites where contaminants are left in place at levels that do not allow for unlimited use and unrestricted exposure. The LUCs ensure that those contaminants do not pose an unacceptable risk to human health and the environment. LUCs can consist of institutional controls and/or engineering controls. Institutional controls, such as activity restrictions and regulatory notifications are typically legal documents in the form of deed restrictions, easements, and restrictive covenants. In the case of an active military base, they can also consist of Base Instructions, notations on installation land use plans, or similar instruments. In the form of a legal document, the institutional controls will run with the land. Engineering controls are typically barriers, such as a fence or engineered cap.

3.1 Performance Objectives

The ROD selected LUCs, including institutional controls and engineering controls, as components of the final remedy for OU1 to control or restrict certain types of property uses. The LUCs included in the selected remedy will be maintained until concentrations of hazardous substances have been reduced to levels that allow for unlimited use and unrestricted exposure, as determined by the Post-Closure Monitoring and Maintenance (PCMM) plan (NAVFAC, 2016) prepared for OU1 and OU4, which incorporates and replaces the prior Long-Term Monitoring Program (LTMP) Work Plan (Tetra Tech 2005). Further, the following are the OU1 LUC performance objectives, which were derived from the Remedial Action Objectives stated in the ROD (Navy, 1993):

- Prevent recreational/residential use of OU1.
- Prohibit any intrusive earthwork without authorization from NAVFAC, or disturbance of the ground surface, subsurface, landfill cap, erosion control measures (revetment), or the surrounding fence, by preventing activities that would compromise their integrity.
- Restrict property use and limit activities to those necessary to maintain and monitor the cap.
- Prohibit the withdrawal of groundwater except for environmental testing and monitoring.
- Maintain the integrity of any current or future remedial or monitoring system, and conduct annual inspections to evaluate compliance with all LUCs.

Institutional controls and engineering controls will be implemented to ensure that the above LUC performance objectives are met.

3.2 Restrictions

The LUCs established for the OU1 LUC Area include the set of restrictions defined below. Following approval of this update to the LUC RD by the EPA and Rhode Island Department of Environmental Management (RIDEM), the restrictions will be imposed on the site property to ensure the LUC performance objectives are met.

The following activities and uses are inconsistent with the LUC performance objectives and are prohibited:

- Any excavation activity that compromises the integrity of the landfill's cap and cap system components and any intrusive earthwork that disturbs soils at any depth without authorization from NAVFAC.
- Any residential or unrestricted recreational uses of OU1.
- Any use of groundwater as potable (drinking water).
- Any activity that compromises the integrity of the shoreline controls (revetment).
- Vehicular traffic other than permissible activities identified below.
- Any use or activity that would disturb or interfere or would reasonably likely disturb or interfere with the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy and the remedy components, including but not limited to: (i) the RCRA C cap, (ii) the shoreline controls (revetment), (iii) gas vents and monitoring wells, (iv) signs and fences, and (v) any other systems used to monitor soil/waste/landfill gas or groundwater to ensure that the remedy remains effective and is protective of human health and the environment.
- Storage of any equipment or vehicles on the landfill cap other than storage that has undergone review and approval as presented in Section 3.3 below.

3.3 Activities Consistent with LUC Objectives

The following activities and uses are consistent with the LUC objectives and will be allowed in the OU1 LUC Area as shown on Figure 2:

- Uses that have undergone review and been approved through the site approval process in accordance with COMNAVREGMIDLANT INSTRUCTION 11011.11B (Navy 2017, or subsequent revisions). Site approval is required for actions that affect or may affect facilities or land located on Navy-controlled land holdings. To ensure the latest version of these instructions are on hand, anyone seeking such approval should contact the NAVSTA ER Program Manager. The site approval

process includes determining if the proposed action is compatible with Environmental Restoration Land Use Controls and requires NAVFAC MIDLANT Environmental to identify all environmental compliance requirements. The NAVSTA ER Program Manager will provide notice and coordinate project review with the EPA and the State of Rhode Island. Based on the outcome of this coordination, the NAVSTA ER Program Manager will provide guidance for projects to ensure consistency with the site remedy. The NAVSTA ER Program Manager will provide specific requirements for the project, detail waste management procedures, and establish standards for protecting remedial infrastructure and restoration of the project site. In order to be approved, the proposed action must meet all environmental compliance requirements for compatibility with Environmental Restoration LUCs.

- Vehicle use for routine maintenance of the landfill; for maintenance of the vegetative cover, such as mowing; for routine maintenance of the access roads; for maintenance of monitoring points; and for other approved activities that are consistent with the LUC objectives. Emergency response vehicles are also permitted on the roadways.

- Long term monitoring activities including inspections conducted per the approved PCMM plan (NAVFAC, 2016), which incorporates and replaces requirements previously described in the LTMP Work Plan (Tetra Tech NUS 2005), the LTMP Work Plan Addendum (Tetra Tech NUS 2010), and the Operations and Maintenance (O&M) Plan (Foster Wheeler 1997).

- Environmental investigation and/or remedial actions conducted per approved work plans.

- Maintenance activities for remedy components and monitoring points as needed.

Engineering controls have been established at the landfill as follows:

- Installation and maintenance of signage which provides notice of the OU1 site restriction information.

- Installation and maintenance of fencing to prevent access by unauthorized personnel.

Implementation actions to be taken to ensure that the LUC objectives are met are discussed in the following section. Section 4.0 also defines the required notifications and authorizations and the roles and responsibilities for the implementation actions.

4.0 Land Use Control Implementation Actions

Pursuant to the ROD, the Navy is responsible for implementing, inspecting, reporting, and enforcing the institutional controls in accordance with this LUC RD. For purposes of this LUC RD, the term "implementation actions" means actions to implement, operate, maintain, and enforce the LUC component of the remedy. The Navy will perform all short- and long-term implementation actions at Site 1 per the Navy Principles (DoD 2004), the FFA, the ROD, and applicable Navy directives. The Navy may in the future delegate or transfer authority to conduct these actions to another entity as part of property transfer agreements (i.e., deed).

The Navy will submit a copy of this document to the land record offices of the City of Middletown, Rhode Island, for the limited purpose of providing public notice of the environmental conditions of and limitations on the use of property. Additionally, copies of this document will be provided to EPA and RIDEM.

As set forth in this LUC RD, the following implementation actions will be performed to ensure that the LUC objectives are met in accordance with the FFA and ROD:

1. Prepare a map defining the OU1 LUC Area boundaries (Figure 2 of this document). Depict on this map the location and boundaries of OU1 and the extent of the area over which the LUCs will apply. Indicate where LUCs have been imposed and annotate LUCs in the Navy geographic information system (GIS) database provided on the Naval Installation Restoration Information Solution (NIRIS) and the LUC Tracking Module for the installation. Follow LUC-related procedures pertaining to ground-disturbing activity and changes in land use, as per NAVSTANPTINST 5090.15C, dated 18 May 2015 (or subsequent revisions); and Commander, Navy Region, Mid-Atlantic Instruction 5090.2A, *Installation Restoration; Land Use Controls at Navy Region, Mid-Atlantic Installations; Establishment and Maintenance*, as amended. Navy will notify EPA and RIDEM in advance of any changes to these internal procedural instructions that would impact the effectiveness of the LUCs.

2. Incorporate this LUC RD by reference into the PCMM plan; additionally, provide copies to EPA and RIDEM.

3. Monitor compliance with the LUCs. LUC monitoring (LUC inspections) augments and will be coordinated with monitoring described in the PCMM plan. LUC monitoring will be conducted by the Navy to verify LUCs are being properly implemented and that the LUC objectives are being met. The LUC monitoring results will be provided to the EPA and RIDEM as part of the PCMM annual report. The LUC implementation actions to be conducted as part of the monitoring are

summarized in Table 1. Records on the facility inspections will be provided in accordance with Table 4 of the PCMM plan. LUC compliance inspections will be conducted on an annual basis unless the frequency is reduced by agreement with the Navy, EPA, and RIDEM. Engineering controls (i.e., signs) will also be inspected as part of both this document and the PCMM plan at the frequency established. A checklist to be used during LUC inspections is provided as Appendix A.

4. Provide notice to the EPA and RIDEM of any proposed actions that trigger the site approval process, and coordinate project review to determine if the proposed action is compatible with Environmental Restoration LUCs. Based on the outcome of this coordination, the NAVSTA Environmental Restoration Program (ERP) Manager will provide guidance for projects to ensure consistency with the site remedy. The ERP Manager will provide specific requirements for the project, detail waste management procedures, and establish standards for protecting remedial infrastructure and restoration on the project site.

5. Report and notify regulatory agencies. The notification requirements are summarized in Table 1 and include the following:

   a) Notify EPA and RIDEM 45 days in advance of any proposed change in land use that would require modifications to the LUCs to remain consistent with the LUC objectives or the selected remedy. The notice shall describe how the LUCs will be changed and mechanisms by which the new LUCs will be implemented to maintain the protectiveness of the remedy.

   b) Notify EPA and RIDEM by telephone and by e-mail as soon as practicable, but within 10 working days, after discovery of any activity that is inconsistent with the LUC objectives or use restrictions, or any other action that may interfere with the effectiveness of the LUCs. Notify EPA and RIDEM regarding how the breach will be or has been addressed within 10 days of sending EPA and RIDEM the discovery notification of the breach activity. For more complex breach situations, a telephone call within this 10-day period among Navy, EPA, and RIDEM to discuss options for addressing the breach will be considered sufficient to meet this notification requirement. Furthermore, any activity that is inconsistent with the LUC objectives or use restrictions, or any other action that may interfere with the effectiveness of the LUCs, will be addressed as soon as practicable but in no case will the process be initiated later than 10 days after the Navy becomes aware of the breach.

   c) Notify the EPA and RIDEM in writing at least 6 months prior to any anticipated transfer or sale of the property subject to LUCs out of Navy custody and control,

including any federal-to-federal transfer, so that EPA and RIDEM can be involved in discussion with the Navy on the appropriate provisions to be included in the transfer terms and conveyance documents to maintain effective LUCs. If it is not possible for the Navy to notify EPA and RIDEM at least 6 months prior, the Navy will make this notification as soon as possible, but no later than 60 days before the transfer or sale of any property subject to LUCs. The Navy shall provide a copy of the executed deed or transfer documents to EPA and RIDEM.

d) Submit reports of annual monitoring. LUC compliance monitoring shall be conducted annually and the results submitted to the EPA and RIDEM. The annual reports will be used in preparation of the five-year reviews to evaluate the effectiveness of the remedy. The LUCs portion of the annual report will evaluate the status of the LUCs and how any LUC deficiencies or inconsistent uses have been addressed. The LUC portion of the annual report will also address whether Navy instructions remain current in regards to LUC enforcement, and whether use of the property has conformed to such restrictions and controls.

6. Obtain EPA concurrence, in consultation with RIDEM, prior to modifying or terminating the LUCs or implementation actions. The Navy or other entity shall seek prior concurrence from EPA, in consultation with RIDEM, before taking any anticipated action that may disrupt the effectiveness of the LUCs or before taking any action that may alter or negate the need for LUCs.

7. Evaluate effectiveness of LUCs as part of each five-year review. Site remedy reviews are required by the CERCLA and the National Contingency Plan as specified in the OU1 ROD (Navy 1992). Each five-year review will include an evaluation of the OU1 remedy. Five-year reviews will be submitted to EPA and RIDEM for review per the FFA (EPA et al. 1992).

Should the Navy fail to complete a required LUC implementation action, EPA and/or RIDEM shall notify the Navy Remedial Project Manager (RPM) and seek immediate action. If the Navy fails to complete a required LUC implementation action within a reasonable time of being so notified, EPA and/or RIDEM may notify the Deputy Assistant Secretary of the Navy (Environment), who will ensure that necessary action is taken.

Should a subsequent owner of or a third party at the OU1 property fail to complete a required LUC implementation action, for which such owner or party is responsible, EPA, RIDEM, and the Navy will consult on the appropriate enforcement action. If after the property has been transferred, the Navy fails to complete a required LUC implementation for which it is responsible, EPA and/or RIDEM will notify the Navy RPM, or designated

project manager per Section VIII in the NAVSTA Newport FFA. If necessary, EPA and/or RIDEM may notify the Deputy Assistant Secretary of the Navy (Environment), who will ensure that necessary corrective action is taken.

5.0 References

Department of Defense (DoD). 2004. Memorandum: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Record of Decision (ROD) and Post-ROD Policy, Attachment 1 Navy Principles and Procedures for Specifying, Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions, January 16.

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TABLES

Table 1: Summary of Land Use Control (LUC) Implementation Actions
Site 1 – Naval Station Newport, Rhode Island

LUC Requirement/Description	Frequency
Institutional Controls	
Issue final LUC Remedial Design (RD)	Subsequent to any modifications
Incorporate this LUC RD by reference into the PCMM plan and submit to EPA and RIDEM	Subsequent to any modifications
Submit to the Land Record Offices of the Town of Middletown, Rhode Island, a copy of this Land Use Control document, for the limited purpose of providing public notice of environmental conditions of and limitations on the use of property	Subsequent to any modifications
Incorporate LUC boundaries into Navy's NIRIS database and LUC Tracker System	Subsequent to any modifications
Conduct annual LUC compliance inspections	Annually
Prepare and issue LUC Inspection Report / completed Inspection Checklist to EPA and RIDEM	Annually
Evaluate LUC effectiveness annually and as part of each five-year review	Annually/every 5 years
Engineering Controls	
Maintain warning signs	As necessary
Inspect perimeter fencing and security gates, and document and maintain as necessary	Annually
Conduct groundwater and sediment monitoring	In accordance with the Long-Term Monitoring Program and subsequent modifications
Prepare and issue Groundwater and Sediment Monitoring Report	Per event
Conduct landfill gas monitoring and sampling	In accordance with the Long-Term Monitoring Program and subsequent modifications
Prepare and issue Landfill Gas Monitoring Report	Per event
Conduct inspection of landfill cap, vegetation, storm drainage system, wells and vents, access road and ramp, and stone revetment in accordance with the PCMM plan.	Semiannually, and as required after 50 mph wind event or 5 inch rain event

LUC Requirement/Description	Frequency
Notification Requirements	
The Navy will notify EPA and RIDEM in advance of any proposed change in land use that would require modifications to the LUCs to remain consistent with the LUC objectives or the selected remedy.	Per event, 45 days in advance
The Navy will notify EPA and RIDEM by telephone and by e-mail after discovery of any activity that is inconsistent with the LUC objectives or use restrictions, or any other action that may interfere with the effectiveness of the LUCs.	Per event, as soon as practicable but within 10 days after discovery
The Navy will notify EPA and RIDEM regarding how the discovered activity that is inconsistent with the LUC objectives or use restrictions, or any other action that may interfere with the effectiveness of the LUCs, will be or has been addressed. For more complex inconsistencies or potential interferences, a telephone call within this 10-day period among Navy, EPA, and RIDEM to discuss options for addressing the breach will be considered sufficient to meet this notification requirement. Furthermore, any activity that is inconsistent with the LUC objectives or use restrictions, or any other action that may interfere with the effectiveness of the LUCs, will be addressed as soon as practicable but in no case will the process be initiated later than 10 days after the Navy becomes aware of the breach.	Per event, as soon as practicable but within 10 days after notice of breach
The Navy will notify the EPA and RIDEM in writing of any anticipated transfer or sale of any real property (including Site 1) subject to LUCs out of Navy custody and control, including any federal-to-federal transfer. If it is not possible for the Navy to notify EPA and RIDEM at least 6 months prior, the Navy will make this notification as soon as possible, but no later than 60 days before the transfer or sale of any property subject to LUCs.	Per event, 6 months advance notice, but not less than 60 days
The Navy will notify EPA and RIDEM and invite comment prior to modifying, terminating, or implementing internal LUC-related policies or procedures if such changes are likely to negatively impact the effectiveness of LUCs.	Per event, 14 days prior to implementation of requested change

FIGURES

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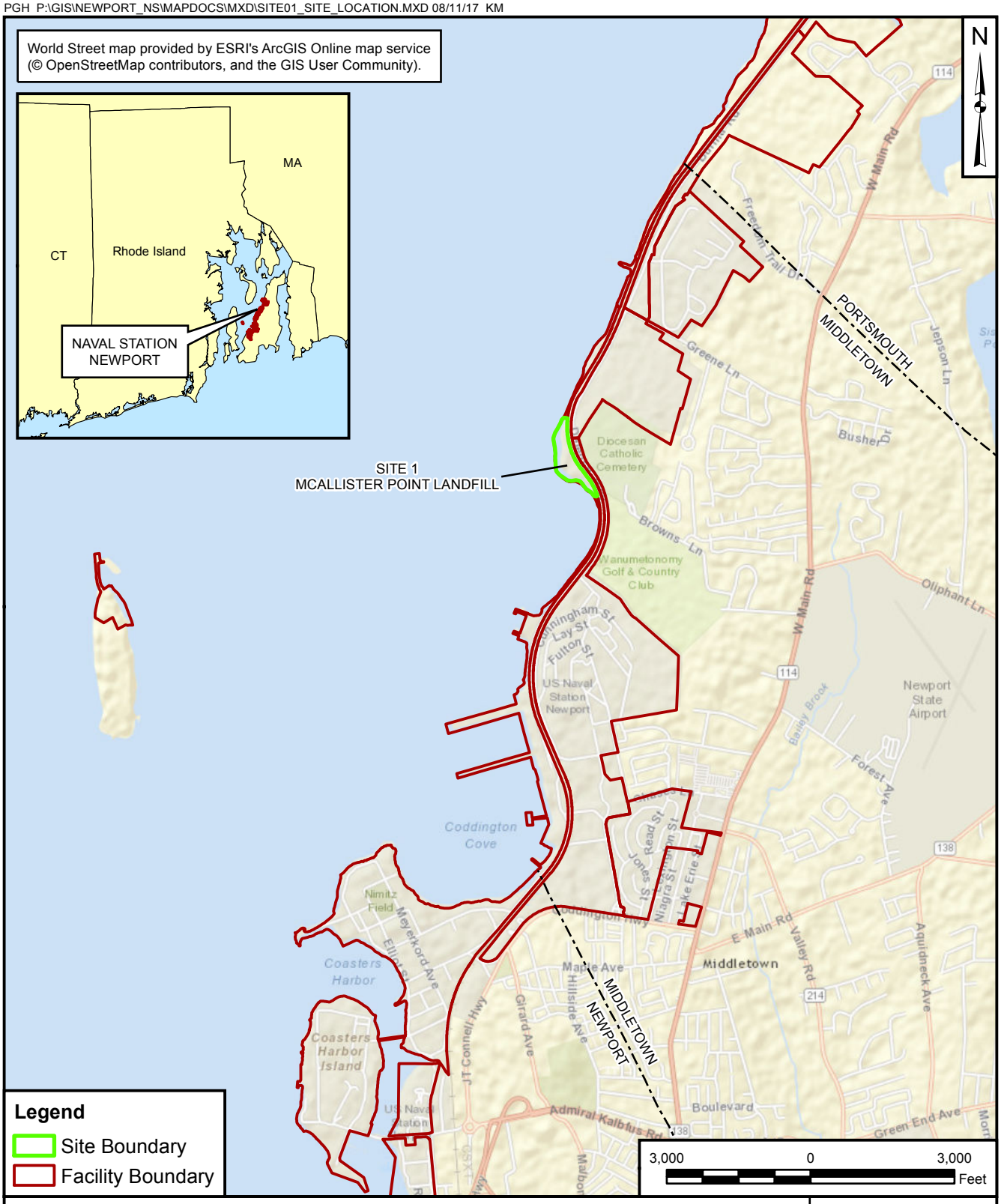

NAVFAC

LOCATION MAP
SITE 1 - MCALLISTER POINT LANDFILL
NAVAL STATION NEWPORT
MIDDLETOWN, RHODE ISLAND

CTO	
WE10	
DRAWN BY	DATE
K. MOORE	06/22/17
CHECKED BY	DATE
S. BUCHANAN	08/11/17
FIGURE NUMBER	
1	

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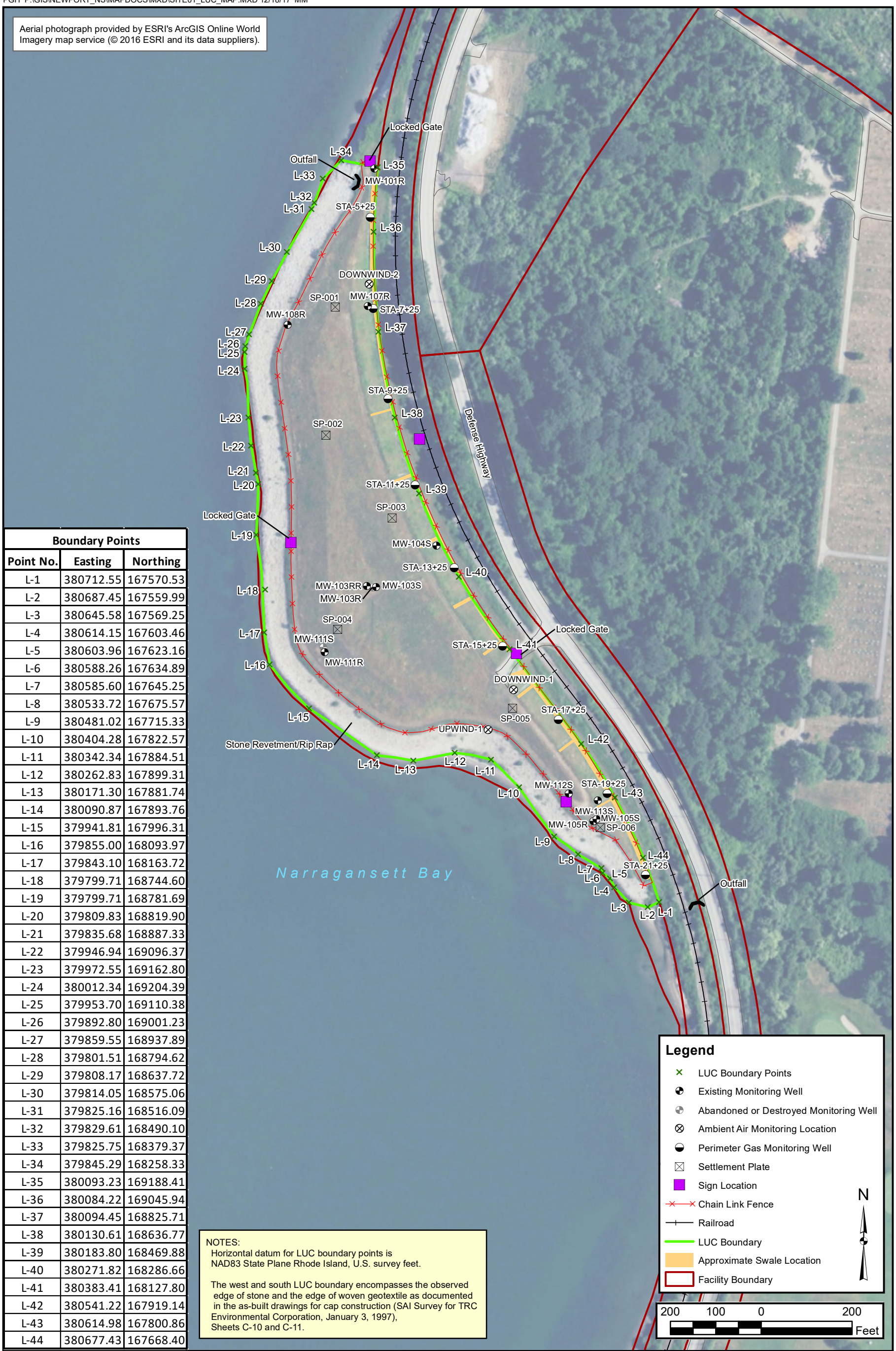

Boundary Points		
Point No.	Easting	Northing
L-1	380712.55	167570.53
L-2	380687.45	167559.99
L-3	380645.58	167569.25
L-4	380614.15	167603.46
L-5	380603.96	167623.16
L-6	380588.26	167634.89
L-7	380585.60	167645.25
L-8	380533.72	167675.57
L-9	380481.02	167715.33
L-10	380404.28	167822.57
L-11	380342.34	167884.51
L-12	380262.83	167899.31
L-13	380171.30	167881.74
L-14	380090.87	167893.76
L-15	379941.81	167996.31
L-16	379855.00	168093.97
L-17	379843.10	168163.72
L-18	379799.71	168744.60
L-19	379799.71	168781.69
L-20	379809.83	168819.90
L-21	379835.68	168887.33
L-22	379946.94	169096.37
L-23	379972.55	169162.80
L-24	380012.34	169204.39
L-25	379953.70	169110.38
L-26	379892.80	169001.23
L-27	379859.55	168937.89
L-28	379801.51	168794.62
L-29	379808.17	168637.72
L-30	379814.05	168575.06
L-31	379825.16	168516.09
L-32	379829.61	168490.10
L-33	379825.75	168379.37
L-34	379845.29	168258.33
L-35	380093.23	169188.41
L-36	380084.22	169045.94
L-37	380094.45	168825.71
L-38	380130.61	168636.77
L-39	380183.80	168469.88
L-40	380271.82	168286.66
L-41	380383.41	168127.80
L-42	380541.22	167919.14
L-43	380614.98	167800.86
L-44	380677.43	167668.40

NOTES:
Horizontal datum for LUC boundary points is NAD83 State Plane Rhode Island, U.S. survey feet.

The west and south LUC boundary encompasses the observed edge of stone and the edge of woven geotextile as documented in the as-built drawings for cap construction (SAI Survey for TRC Environmental Corporation, January 3, 1997), Sheets C-10 and C-11.

NAVFAC

LAND USE CONTROL AREAS
SITE 1 - MCALLISTER POINT LANDFILL
NAVAL STATION NEWPORT
NEWPORT, RHODE ISLAND

CTO	WE10
DRAWN BY	M. MASON
DATE	12/13/17
CHECKED BY	S. PARKER
DATE	12/18/17
FIGURE NUMBER	2

APPENDIX A
LAND USE CONTROL ANNUAL COMPLIANCE INSPECTION CHECKLIST

Land Use Control (LUC) Compliance Inspection Checklist
Operable Unit (OU) 1 - Site 1: McAllister Point Landfill
Naval Station (NAVSTA) Newport, Middletown RI

Description: Site 1 (OU1) is located at McAllister Point, between Defense Highway and Narragansett Bay, in Middletown, Rhode Island. The LUCs are in place to: a) prohibit disturbance of the ground surface, subsurface, landfill cap, or the surrounding fence; b) restrict property uses to those necessary to maintain the cap; c) prevent the withdrawal of groundwater except for environmental testing and monitoring; and d) maintain the integrity of the monitoring system. Restricted activities are stated in Section 3.2 of the LUC Remedial Design (RD). The LUCs apply within the fence inside the boundary of Site 1 (Figure 2 of the LUC RD), and the limits of the stone revetment seaward to the mean low tide line. LUC components include: four warning signs; fences and gates; the impermeable landfill cap overlain by vegetative soil and drainage layers; the protective stone revetment; the storm water drainage system; and the monitoring wells/gas points. The remedy included the installation and maintenance of a RCRA-C multilayer cap, landfill gas management, surface controls, additional site investigations, monitoring, and LUCs.

INSTRUCTIONS:

A This checklist may only be used and submitted with a copy of Figure 2 of the LUC RD (date cited in Part 1, Question 1) depicting LUC boundaries and key remedy components.

B Checking "Yes" in the responses below indicates compliance with the LUC requirements. Any question that does not have a "Yes" response must be explained in the comments section, and affected areas must be clearly noted on the accompanying copy of the appropriate figure from the LUC RD.

C The site inspection portion must include a walk of open areas, visual observation of the boundary as accessible, inspection for trespass/entry, and physical inspection of every LUC component identified in the description above. Photographs should be taken to document anything that is found to be out-of-compliance with the LUC RD.

D The inspection team must review the LUC RD and the prior year's LUC inspection report prior to conducting the inspection. The LUC RD shall be on-hand at the time of the inspection.

E The LUC inspection consists of five parts - 1) a review of files in NIRIS and the town planning office and interviews with the Navy RPM and the NAVSTA Point of Contact (POC); 2) site walk and inspection of LUC components; 3) follow up to identify notices to responsible parties of deficiencies identified; 4) suggested revisions to the inspection checklist; and 5) certification by the inspection team. The completed inspection checklist shall be included in the updated LUC Inspection Report, and the Inspection Report shall be filed in the post-ROD file.

PART 1 - FILE REVIEW AND INTERVIEWS

		RESPONSES	
		YES	NO
1	Write in the current version of the LUC RD document as of inspection date: LUC RD Date: _____		
1.a	Is the complete LUC RD on file with NAVFAC in NIRIS?		
2	Check LUC Tracker Module of NIRIS - Does the boundary shown appear to match that in the LUC RD?		
3	Does the town of Middletown, RI, offices have the current LUC RD available (electronically or physically)?		
4	Review files to seek records documenting EPA and/or RIDEM notices of non-compliance. Is there:		
4.a	absence of activities inconsistent with the LUCs (specifically: there is no property use or traffic other than allowable per the LUC RD)?		
4.b	absence of notices of corrective actions regarding activities that are inconsistent with the LUCs?		
4.c	absence of changes in procedures affecting LUCs (e.g. rights of way, easements, parking travel routes, etc.)?		
4.d	absence of proposed land use changes, or intents to reuse property?		
4.e	absence of documents or other information indicating planned transfer or sale of property?		
5	Do the NAVFAC ERP RPM and the NAVSTA ERP POC confirm that there are no plans for transfer, sale, or re-use of the site? (In addition, interviewer should follow up on any questions that remain uncertain from 4a–4e.)		
6	Do records indicate that the planned remedial actions stated in the ROD have been completed?		

PART 2 - SITE INSPECTION

		YES	NO
7	Is Figure 2 of the LUC RD attached to this inspection form?		
8	Land uses and evident activities - is there:		
8.a	absence of any activities that could impact the integrity of the cover system?		
8.b	absence of recently installed wells, other than those associated with the remedy? (Refer to Fig. 2)		
8.c	absence of stored investigation-derived waste and/or unlabeled drums on site?		
8.d	absence of stressed vegetation, or overgrowth that could impact the integrity of the cover system?		
8.e	absence of subsidence, grade changes, cracks and gaps in the cover?		
8.f	absence of erosion, exposed geotextile in the soil cover and transition area?		
9	Is the site free of excavations or construction, including utility work and repair, other than those associated with the remedy?		
10	Are warning signs present as mapped and in good condition?		
11	Are the Navy's monitoring wells in good condition (e.g., undamaged casing/road box, wells properly bolted or locked)?		
12	Is the perimeter fence intact and secure, are the gates and locks operating as designed?		
13	Is the site free of evidence of vandalism and trespass?		
14	Is the shoreline revetment free of indication of major scouring, exposed geotextile, displaced armor stone, etc.?		

PART 3: COMMENTS & NOTES Provide question number from Parts 1 and 2 above for each comment. Use additional pages if needed.

PART 4: RECOMMENDATIONS Provide suggested improvements to this form and inquiries.

PART 5: CERTIFICATIONS

Onsite Inspection Team Roster

Lead Inspector Name	Affiliation	Signature	Date
Other Attendee Name	Affiliation	Signature	Date
Other Attendee Name	Affiliation	Signature	Date

Navy Annual Certification:

I hereby certify that a complete and thorough inspection and an evaluation of compliance with soil land use controls established for the site in the 1993 Record of Decision for Site 1 have been performed and that the items noted on this inspection form have been assessed with respect to the intent of the implemented remedial action objectives for the site.

Navy Representative Name	Title
Navy Representative Signature	Date

ENCLOSURE

DEPARTMENT OF THE NAVY
COMMANDER
NAVY REGION MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:
COMNAVREGMIDLANTINST 5090.2A
N45
JAN 0 3 2018

COMNAVREG MIDLANT INSTRUCTION 5090.2A

From: Commander, Navy Region Mid-Atlantic

Subj: ESTABLISHMENT AND MAINTENANCE OF INSTALLATION RESTORATION LAND USE CONTROLS AT NAVY REGION MID-ATLANTIC INSTALLATIONS

Ref: (a) COMNAVREGMIDLANTINST 11011.11B
(b) COMNAVREGMIDLANTINST 11011.12B
(c) OPNAV M-5090.1 of 10 Jan 2014
(d) DOD M-4715.20 of 9 March 2012
(e) Navy Environmental Policy Memo 99-02
(f) SECNAV M-5210.1 of Jan 2012
(g) OPNAVINST 5215.17A

1. Purpose. This instruction prescribes procedures for establishing and maintaining Land Use Controls (LUCs) at contaminated sites remediated under the Navy Environmental Restoration Program (NERP). It also assigns mission, functions, and tasks necessary for the successful management and maintenance of land use controls under references (a) through (e).

2. Cancellation. COMNAVREGMIDLANTINST 5090.2.

3. Background

a. At sites where contaminants are left in place at levels that do not allow for unrestricted use, LUCs are used to ensure that the contaminants do not pose an unacceptable risk to human health or the environment. LUCs are of two types, engineered controls and institutional controls. Engineered controls include fences, signs, and other physical means of controlling access to, and use of, real property. Institutional controls are legal and administrative restrictions on land use, such as notations on installation land use plans, notices recorded in public land records, base master plans, and periodic site inspections.

b. LUCs may be of indefinite duration and must be reviewed at least every five years for effectiveness. They are, or are part of, the clean-up remedy for a NERP site prescribed in a Record of Decision (ROD) or other decision document when the clean-up remedy does not achieve standards allowing unlimited usage at the site and unrestricted exposure to site contamination. After a ROD or other decision document is finalized, terms and conditions for establishing and maintaining land use controls will be developed and memorialized in a Land

Use Control Remedial Design (LUC RD) or similar document. Land use controls may be modified as site conditions change.

c. To be effective, land use controls must be imposed in a timely manner, and thereafter, maintained for as long as necessary. Long-term maintenance of land use controls requires vigilance and funding. Recognizing the need to protect human health and the environment, Navy Region Mid-Atlantic (NRMA) determined that a comprehensive and coordinated approach for installation land use controls is required. This approach requires cooperation between the Regional Engineer staff (Assistant Regional Engineer (ARE), Community Planning Liaison Officer (CPLO) and N45) and Navy Facilities Engineering Command (NAVFAC MIDLANT); references (a) and (b) pertain.

4. Action

a. According to reference (c), Commander, Navy Facilities Engineering Command (COMNAVFACENGCOM) is responsible for environmental remediation at NERP sites. NAVFAC MIDLANT is the Navy Facilities (NAVFAC) component that serves the installations to which this instruction applies. In carrying out its program responsibilities, Navy Facilities Engineering Command Mid-Atlantic Environmental (NAVFAC MIDLANT EV) will:

(1) Develop RODs and LUC RDs in coordination with affected installations and tenant activities. Operational flexibility, accomplishment of core mission requirements, combat readiness, security, force protection, cost, and other relevant criteria will be taken into consideration in the selection, implementation, and maintenance of LUCs.

(2) Implement and maintain land use controls in the manner and within the time prescribed in RODs and LUC RDs. Program and budget for the cost of maintaining LUCs, including the cost of performing oversight inspections and LUC reviews every 5 years.

(3) Integrate LUCs into the site approval processes, work permits, dig permits, infrastructure plans (e.g., shore infrastructure plans, global shore plans, and master plans), installation maps, and geographic information systems. Deny permission to conduct ground-disturbing activities that make use of, or develop, sites in a manner inconsistent with approved LUCs. In so doing, implement procedures and safeguards to withhold or deny site approval until it has been verified that no LUCs exist, or that the proposed use or development is consistent with existing LUCs.

(4) Retain RODs, LUC RDs, and other LUC documents for all sites to which this instruction applies per applicable records management requirements.

(5) Inform affected installation Commanding Officers (COs) and Public Works Officers (PWOs) at least annually of LUCs at their installations. This requirement may be accomplished by inviting these parties' attention to a list of LUCs published on the Regional Shore Installation Management System (RSIMS) hosted on the NAVFAC GeoReadiness Enterprise Business System website or by an annual email summary.

(6) Include information on applicable LUCs for inclusion in scopes of work for contracts involving ground-disturbing activity at locations subject to LUCs.

(7) Report to the installation COs and PWOs any activity inconsistent with known LUCs (e.g., failure of an engineered control).

b. Installation Commanding Officers will:

(1) Execute RODs and other LUC decision documents.

(2) Observe, adhere to, and publicize to their organizations and tenant commands LUCs imposed on their installations.

(3) Take appropriate steps to preclude land use, site development, and ground-disturbing activity inconsistent with approved LUCs. This includes, but is not limited to, following site approval procedures, adhering to dig permit requirements, and incorporating LUCs into infrastructure plans (e.g., shore infrastructure plans, global shore plans, master plans) and host/tenant support agreements.

(4) Include information on applicable LUCs and compliance obligations in scopes of work prepared for contracts involving ground-disturbing activity at locations subject to LUCs.

(5) Report to NAVFAC MIDLANT EV all activity inconsistent with LUCs (e.g., failure of an engineered control).

(6) Cancel or revise command instructions inconsistent with this instruction.

c. Tenant Activities of CNRMA Installations will:

(1) Observe, adhere to, and publicize to their organizations LUCs imposed on installations at which they conduct operations.

(2) Take appropriate steps to preclude land use, site development, and ground-disturbing activity inconsistent with approved LUCs. This requirement includes, but is not limited to, consulting with the installation PWO during the site approval process and when applying for dig permits.

(3) Include information on applicable LUCs and the required compliance obligations in scopes of work prepared for contracts involving ground disturbing activity locations subject to LUCs.

(4) Report to the installation Commander all activity inconsistent with LUCs.

5. Oversight. Suspected violations of LUCs should be reported to NAVFAC MIDLANT EV, who will work with the installation COs to notify regulators.

6. Records Management. Records created as a result of this directive, regardless of media and format, shall be managed per SECNAV Manual 5210.1 of January 2012.

7. Review and Effective Date. Per OPNAVINST 5215.17A, COMNAVREG MIDLANT will review this instruction annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, DoD, SECNAV, and Navy policy and statutory authority using OPNAV 5215/40 review of instruction. This instruction will automatically expire 5 years after effective date unless reissued or canceled prior to the 5-year anniversary date, or an extension has been granted.

M. R. MOORE
Captain, U.S. Navy
Chief of Staff

Releasability and distribution: This instruction is cleared for public release and is available electronically only via CNIC G2 Portal/Organization/Mid-Atlantic Website, https://g2.cnic.navy.mil/CNRMA/Pages/Default.aspx

DEPARTMENT OF THE NAVY
COMMANDER
NAVY REGION MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:

COMNAVREGMIDLANTISNT 11011.11B
N4/ARE
MAY 1 1 201/

COMNAVREG MIDLANT INSTRUCTION 11011.11B

From: Commander, Navy Region Mid-Atlantic

Subj: SITE APPROVAL REQUIREMENTS AND PROCESS

Ref: (a) COMNAVREGMIDLANTINST 5090.2
(b) NAVFACINST 11010.45
(c) NOSSAINST 8020.22
(d) OPNAVINST 11010.33C
(e) NAVFAC BMS B.25.3.1-4
(f) SECNAV M-5210.1 of Jan 2012
(g) OPNAVINST 5215.17A

Encl: (1) Sample Site Approval Request Letter
(2) NAVFAC Site Approval Request Form (NAVFAC 11010/31)

1. Purpose. Provide guidance for preparation and processing site approvals in the Navy Region, Mid-Atlantic Area of Responsibility (AOR).

a. Regional Commanders are responsible for the management of land and facilities. Planning documentation will be prepared and submitted, per references (a) through (g). The site approval process is the review of proposed actions that affect or may affect facilities or land located on Navy-controlled land holdings. The site approval review process includes determining if the proposed action is compatible with mission requirements, natural and man-made constraints, land use, installation architecture and appearance, installation development plans, sustainable development principles, environmental restoration land use controls following reference (a), and all applicable laws and regulations.

b. Site approval is not required for routine maintenance and routine repair of facilities. Under reference (b), site approval is required for all actions sited on Navy-controlled land holdings, regardless of funding source. Site approvals are granted based upon the information in the request. If the site approval is in support of a proposed project, regardless of funding, it must be revalidated by the Public Works Department (PWD) staff prior to project start. The site approval becomes invalid if any of the following terms are violated:

(1) Any conditions in the original request materially change;

(2) Project scope or location is altered in any manner from the information that the

certification was granted;

(3) Explosive safety related site approvals granted under the Safety Assessment for Explosives Risk (SAFER) exceed five years. If the site approval has exceeded five years, it must be revalidated.

2. Cancellation. COMNAVREGMIDLANTINST 11011.11A.

3. Action

a. Initiating activities shall:

(1) Submit site approval requests for the following:

(a) Any project or real estate action that will have explosives safety criteria implications associated with ammunitions and explosives as described in reference (c).

(b) Any project or real estate action that affects, or is affected by, airfield safety criteria.

(c) Any project or real estate action that creates or is proposed to be in an area of electromagnetic illumination, or involves electromagnetic transmission.

(d) Any project, real estate action, or proposed use of property that proposes changing the functional use of a facility, or the land use, or physical layout of an area.

(e) Any proposed use of property, permanent or temporary, that involves placing or removing a facility or structure.

(f) Any project or real estate action that disturbs soil, sediment, groundwater, or surface water inconsistent with Land Use Controls (LUCs) or other restrictions in any Installation Restoration (IR) Site or location is within a historic district.

(2) Submit a request for site approval cover letter, enclosure (1), signed by the unit commander, or their designated representative, to the Installation Commanding Officer (ATTN: Public Works Officer). Request cover letters are not required if the PWD is self-generating the site approval.

(3) Work with PWD planner to prepare section (a) of the Naval Facilities Engineering Command (NAVFAC) site approval request form, enclosure (2).

b. NAVFAC Public Works Department shall:

(1) Work with initiating activity to prepare section (a) of the NAVFAC site approval request form.

(2) Process, track, and maintain a record of all activity site approvals except as otherwise described in reference (c) for explosive safety site approvals.

(3) Submit a separate endorsement for relocatable facilities (trailers), found in reference (d), to the Assistant Regional Engineer (ARE) in addition to the site approval process.

(4) Submit the request for site approval to Commander Navy Region Mid-Atlantic (ATTN: Assistant Regional Engineer) for all situations where the activity does not specify a particular installation for the site. At the discretion of the ARE, site approvals may require review and endorsement by the ARE.

(5) Actions involving explosive safety, electromagnetic radiation, waivers to airfield safety criteria, or small arms range surface danger zones require additional action and approval through the applicable authority; Naval Ordinance Safety and Security Activity (NOSSA); Department of Defense Explosive Safety Board (DDESB); Space and Naval Warfare Systems Command (SPAWAR); Naval Air Systems Command (NAVAIR); Commander, Navy Installations Command (CNIC); or Chief of Naval Operations (CNO). These reviews will be coordinated by the PWD Planner. Because of the approval chain, allow additional time (3 to 6 months) for processing.

(6) In partnership with the action proponent, identify all of the environmental and National Environmental Protection Act (NEPA) compliance requirements as described in reference (e). In some situations, permits may be required, or an Environmental Assessment (EA) may be required. Final site approval will not be granted until all required NEPA and Clean Air Act (CAA) documentation is completed. In some cases, NEPA documentation is still required when site approval is not (e.g. repair of historic facilities).

(7) Make recommendations for the requirement of an environmental condition of property when in some cases the real estate being proposed for use has previous activities creating potential environmental liability.

4. Forms and Information Management Control. NAVFAC Site Approval Request Form 11010/31 is supplied by N4, Regional Engineer, as enclosure (2) of this instruction. More detail on the site approval process and site approval checklists can be found in references (c) and (d). Environmental checklists vary by state and can be provided by the Public Works Department at the installation.

5. Records Management. Records created as a result of this directive, regardless of media and format, shall be managed per SECNAV Manual 5210.1 of January 2012.

6. Review and Effective Date. Per OPNAVINST 5215.17A, CNRMA will review this instruction annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, DoD, SECNAV, and Navy policy and statutory authority using OPNAV 5215/40 review of instruction. This instruction will automatically expire 5 years after effective date unless reissued or canceled prior to the 5-year anniversary date, or an extension has been granted.

M. R. MOORE
Captain, U.S. Navy
Chief of Staff

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SAMPLE SITE APPROVAL REQUEST LETTER

11011
Code

From: (Activity Head)

To: Commanding Officer,
(Attn:Public Works Officer)

Subj: REQUEST FOR SITE APPROVAL FOR

Ref: (a) NAVFACINST 11010.45

Encl: (1) NAVFAC Site Approval Request Form (NAVFAC 11010/31)

1. Per reference (a), enclosure (1) is forwarded for your review/approval. Requesting site approval to (briefly explain).

2. In addition to completing site approval, National Environmental Policy Act (NEPA) documentation will be initiated and completed to allow this project to be executed.

3. My point of contact for this project (name) at (commercial and DSN phone number), or (E-Mail).

SIGNATURE BLOCK

REQUEST FOR PROJECT SITE APPROVAL/EXPLOSIVES SAFETY CERTIFICATION NAVFAC 11010/31 (NAVFAC MIDLANT REV. 8-2009)

PART I

DIRECTIONS IN NAVFACINST 11010.45

MAY 1 1 2017

SECTION A – INSTALLATION SUBMISSION

1. To:			2. From:	
3. Program Year:	4. Cost ($000):	5. Type Funding	6. Activity UIC	7. Date:
8. Category Code and Project Title:				9. Project Number

10. Type of Project:
- ☐ New Construction
- ☐ Change Use
- ☐ Addition to Existing Facility
- ☐ Major Modification to Existing Facility
- ☐ Relocation of Structure
- ☐ Maintenance and/or Repairs
- ☐ Repair by Replacement
- ☐ Demolition
- ☐ Other

11. Type of Request:
- ☐ Airfield Safety Site Approval
- ☐ Explosives Site/Safety Certification
- ☐ EMR Site Approval
- ☐ Re-submittal or Standard Site Approval (No Safety Criteria Involved)

12. Project Description

13. _____Sets of Project Maps Attached

14. _____Sets Part II Division(s)_____Attached

SECTION B –NAVFAC REVIEW

1. Name/Code/Phone No. of Reviewer/E-Mail Address:	2. Date Received:

3. Evaluation:

4. Safety Review Requested: (check appropriate box(es))
☐ NOSSA ☐ DDESB ☐ SPAWAR ☐ NAVAIR ☐ CNO ☐ OTHER

5. Date Forwarded:

6. Date of Safety Certification:

NOSSA	DDESB	SPAWAR	NAVAIR	CNO	OTHER

SECTION C – FINAL SITE APPROVAL ACTION

1. Approvals:
- ☐ Site Approved
- ☐ Site Disapproved
- ☐ Deferred/Returned
- ☐ Explosives Safety Certification Approved
- ☐ Explosives Safety Certification DISAPPROVED
- ☐ Interim Construction Waiver Approved

2. Certification Identification:

3. Remarks

4. Other Approvals Required
- ☐ Airfield Safety Waiver Required
- ☐ Final Explosives Safety Review Required

5. Approving Official:

6. Date:

DEPARTMENT OF THE NAVY

NAVAL STATION NEWPORT
690 PEARY STREET
NEWPORT, RHODE ISLAND 02841-1522

IN REPLY REFER TO:

NAVSTANPTINST 5090.15C
ENV
MAY 18 2015

NAVAL STATION (NAVSTA) NEWPORT INSTRUCTION 5090.15C

From: Commanding Officer, Naval Station Newport

Subj: LAND USE RESTRICTIONS FOR INSTALLATION RESTORATION (IR) SITES AND OTHER CONTAMINATED PROPERTIES

Ref:
(a) OPNAVINST 5090.1D, Chapter 42
(b) OPNAVINST 5100.23G CH-1 Navy Safety and Occupational Health Program Manual
(c) COMNAVREGMIDLANTINST 5090.2 Installation Restoration; Land Use Controls at Navy Region Mid-Atlantic Installations; Establishment and Maintenance Dated 27 May 2003
(d) OSHA 29 CFR 1910.120 HAZWOPER
(e) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)
(f) Toxic Substances Control Act (TSCA)
(g) Superfund Amendments and Reauthorization Act of 1986 (SARA)
(h) Resource Conservation and Recovery Act (RCRA)
(i) Rhode Island Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases
(j) Federal Facility Agreement of 1992
(k) Site 9 Land Use Control Remedial Design (LUCRD) for the Old Fire Fighting Training Area Operable Unit 3 of February 2012
(l) Site 8 Land Use Control (LUC) Remedial Design (RD) for the Naval Undersea Systems Center (NUSC) Disposal Area of October 2013
(m) Site 1 Land Use Control (LUC) Remedial Design (RD) for McAllister Point Landfill Operable Unit 1 of February 2012
(n) Site 12 Land Use Control (LUC) Remedial Design (RD) for Decision Unit 4-1 at Tank Farm 4 Operable Unit 11 of April 16, 2014
(o) Site 13 Land Use Control (LUC) Remedial Design (RD) for Decision Unit 5-1 at Tank Farm 5 Operable Unit 2 of July 23, 2014

(p) Site 19 Land Use Control (LUC) Remedial Design (RD) for the Former Derecktor Shipyard Operable Units 5 and 12 of 2015
(q) Site 17 Land Use Control (LUC) Remedial Design (RD) for the Gould island Operable Unit 6 of 2015
(r) NAVSTA Newport Instruction 5090.27A Land Use Restrictions at the Former Building 86 CHI and Building 355 CP, dated 27 August 2012
(s) COMNAVREGMIDLANTINST 11011.11 Site Approval Process dated 01 Dec 2004
(t) COMNAVREGMIDLANTINST 11011.12A Obtaining Work Permits dated 08 May 2003

Encl: (1) IR Site Map for Naval Station Newport
(2) Former Building 86 CHI and Building 355 CP Areas
(3) Former Building 70 Midway Site
(4) Gate 2 Phytoremediation Area

1. Purpose. This instruction establishes a local uniform policy and requirements at NAVSTA Newport to restrict land use, site development, and "activities that disturb soil, sediment, groundwater, or surface water" at the IR sites in enclosure (1), the other contaminated or LUC restricted property in enclosures (3) through (4) or the buried asbestos debris sites at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP to achieve the following:

a. Protect the remedies in place from damage. Remedies typically consist of engineered soil cover systems as well as asphalt and concrete surfaces.

b. Protect human health and the environment from exposure to chemicals in the soil, groundwater, surface water, and air.

c. Enforce the LUCs for the sites in references (k) through (r) as agreed to by the United States Environmental Protection Agency (EPA), Rhode Island Department of Environmental Management (RIDEM), and the Navy.

d. Control access and use of IR sites and other contaminated or LUC restricted property that do not yet have a LUC because the investigations are ongoing.

2. Cancellation. NAVSTA NEWPORT/LOCAL AREA RI COORDINST 5090.15B.

3. Applicability. This instruction is applicable to all Navy departments, tenant commands, contractors, visitors, and personnel at NAVSTA Newport.

4. Background. NAVSTA Newport was placed on the National Priorities List in 1989 due to the contamination present at the IR sites shown in enclosure (1). A Federal Facility Agreement (FFA), reference (j), was executed in 1992 between the Navy, EPA, and the DEM to facilitate the restoration of these sites. The FFA specifies how the IR sites are studied and cleaned-up. The regulatory framework for studying and cleaning-up IR sites is specified in detail in references (d) through (i). The IR sites include: Tank Farms 1, 2, 3, 4 and 5; the former Derecktor Shipyard (Onshore & Offshore); McAllister Point Landfill; Gould Island (Onshore & Offshore); Coddington Cove Rubble Fill; Carr Point Storage Area; Carr Point Shooting Range; various Coddington Cove Buried Asbestos Debris Sites shown in enclosure (1) on page 14 (Nimitz Hall Bldg. 1358 CP, Nimitz Field, Bishops Rock, Prichard Field North and South, Combat Training Pool Bldg. 1357 CP, and the Marine Detachment Bldg. 1112 CP; Naval Underwater System Center (NUSC) Disposal Area, and the Old Fire Fighting Training Area (OFFTA). A portion of the John H. Chafee Fitness Center is also part of the OFFTA IR site.

There are other contaminated and LUC restricted property at NAVSTA Newport. Polychlorinated biphenyl (PCB) contamination is present at Building 355 CP and the former Building 86 CHI. These buildings are being studied and cleaned up to satisfy the Toxic Substances Control Act. These 2 PCB contaminated properties are shown in enclosure (2) and the corresponding LUCs are documented in reference (t). Oil contamination and state- and federally-regulated hazardous substances are also present at former Building 70 Midway and Tank Farms 1, 2, 3, 4 and 5. The former Building 70 Midway site, which is shown in enclosure(3), is regulated under state Underground Storage Tank and Site Remediation Regulations, and will also be remediated to satisfy the requirements of the Toxic Substances Control Act. Portions of Tank Farms 1,2,3,4 and 5 are regulated under CERCLA and PCB contamination at Tank Farms 1, 2 and 3 is also being addressed to satisfy the requirements of TSCA. Arsenic contamination is present throughout NAVSTA Newport and is managed under a state approved Soil Management Plan. There is an arsenic phytoremediation area at Gate 2, which is shown in enclosure (4). In addition to the IR site described above as "various Coddington

Cove Buried Asbestos Debris Sites", buried asbestos debris has been found at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP. Buried asbestos debris sites will be controlled through the following actions or requirements:

(a) Surface materials (building footprints, pavement and structural materials like geotextile layers and reinforced and artificial turf), 2 feet or more of clean soils or a combination of soil and other structural materials will be used to isolate asbestos from exposure. For example, the causeway portion of the Bishop Rock recreation area is covered with a geotextile and 1 foot of gravel;

(b) Remedial actions will be implemented, likely LUCs, to manage buried asbestos;

(c) An Asbestos Hazard Reduction Plan will be prepared and approved by the Environmental Office prior to disturbing surface soils or materials ; and

(d) Contractors and government workers will stop work to determine if asbestos is present when building rubble is encountered at any construction or work site.

5. Definitions

a. Installation Restoration (IR) Site. An IR site is a property included in either the Installation Restoration or Military Munition Response Programs. These programs address contamination from a hazardous substance, pollutant, contaminant, and military munitions waste at active installations. Through these programs, the Navy complies with environmental cleanup laws, such as the Comprehensive Environmental Response, Compensation, and Liability Act, also known as the Superfund Act.

b. Land Use Controls (LUCs). Also known as "institutional controls," are defined broadly as legal measures that limit human exposure by restricting activity, use, and access to properties with residual contamination. LUCs can consist of institutional controls and/or physical/engineering controls. Institutional controls, such as restrictions, notifications, etc., are typically legal documents in the form of deed restrictions, easements, and restrictive covenants. In the case of an active military base, they can consist of base instructions, notations on installation land use plans, or similar instruments. In the form of legal documents, the institutional controls will run with

the land. Engineering controls are typically barriers, such as asphalt, buildings, or fencing.

c. Activities that Disturb Soil, Sediment, Groundwater or Surface Water. Any form of damage to remedial infrastructure, excavation, sediment removal, soil penetration, soil compaction, filling, change of topography, or change in land use. The definition includes: any action to dewater excavations; extraction, withdrawal or exposure of groundwater or surface water for discharge, consumption, or use in any way.

d. Polychlorinated Biphenyl (PCB). A PCB is a synthetic organic chemical compound widely used as dielectric and coolant fluids. PCB production was banned by Congress in 1979. According to the EPA, PCBs cause cancer in animals and are probable human carcinogens.

e. Change in land Use. A change in land use is any new commercial/industrial, recreational, or residential land use of the property not previously approved by the Environmental Office or restricted by an LUC. Examples include: a picnic or barbecue, construction of a new barracks, a training exercise, crane testing, equipment storage, and any real estate licenses, leases or transfers.

6. Action. The following actions are directed:

a. Commanding Officer

(1) Ensures written plans and procedures are in place to effectively manage contaminated properties in accordance with the state and Federal laws and regulations in references (d) through (i), as well as, Navy policy in references (a) through (c).

(2) Observes, adheres to, and enforces LUCs and other restrictions for contaminated properties.

(3) Takes appropriate steps to preclude land use, site development, and activities that disturb soil, sediment, groundwater or surface water in consistent with LUCs and other restrictions. This includes, but is not limited to Site Approvals, Work Permits, Dig safe Permits and incorporating LUCs and other restrictions into infrastructure plans and host/tenant support agreements.

b. NAVSTA Newport Departments, Tenant Commands & Contactors

(1) NAVSTA Newport departments, tenant commands, and contractors shall obtain prior approval from the NAVSTA Newport Environmental Office before proceeding with any activities that disturb soil, sediment, groundwater or surface water, or change the land use at IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4) or buried asbestos debris sites at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP. Requests for approval shall meet the following requirements:

(a) Requests shall be submitted to the Environmental Office at the earliest planning phase for any work or project and, at a minimum, 60 days in advance of the start.

(b) Requests shall include a description of the proposed work, a drawing showing the work area and a schedule or start date.

(2) NAVSTA Newport departments, tenant commands and contractors are prohibited from applying pesticides, herbicides and fungicides at IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4).

(3) Obey posted instructions and warnings at contaminated properties to restrict access, give notice of LUC restrictions and hazard warnings.

(4) Prepare and submit an Asbestos Hazard Reduction Plan to the Environmental Office for approval prior to disturbing surface soils or materials at buried asbestos debris sites.

(5) Stop work to determine if asbestos is present when building rubble is encountered in subsurface soils at any construction or work site.

c. Environmental Office

(1) Processes requests from NAVSTA Newport departments, tenant commands, and contactors to perform activities that disturb soil, sediment, groundwater or surface water, or change the land use at IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4) or buried asbestos debris sites at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP.

(a) Coordinates the request with the EPA and RIDEM as appropriate.

(b) Coordinates the request with other NAVSTA departments and other Navy organizations as appropriate.

(c) Notifies the NAVSTA Newport department, tenant command, and contactor when a determination is complete.

(d) Specifies any requirements or conditions such as; waste management procedures, standards for protecting remedial infrastructure, restoration of the project site, safety, and personnel training.

(e) Processes requests for emergency work as expediently as possible.

(2) After notifying the Commanding Officer, reports to and notifies regulatory agencies.

(a) Notifies EPA Region 1 and the State of RI 45 days in advance of any proposed change in land use that would require modifications to the LUCs to remain consistent with the LUC performance objectives or the selected remedy. The notice shall describe how the LUCs will be changed and mechanisms by that the new LUCs will be implemented to maintain the protectiveness of the remedy.

(b) Notifies EPA Region 1 and the State of RI by telephone and by e-mail as soon as practicable, but within 5 working days, after discovery of any activity that is inconsistent with the LUC objectives or use restrictions, or any other action that may interfere with the effectiveness of the LUCs. Notifies EPA Region 1 and the State of RI regarding how the breach will be or has been addressed within 5 days of sending EPA Region 1 and the State of RI the discovery notification of the breach activity. For more complex breach situations, a telephone call within this 5-day period among Navy, EPA, and the State of RI to discuss options for addressing the breach will be considered sufficient to meet this notification requirement. Furthermore, any activity that is inconsistent with the LUC objectives or use restrictions, or any other actions that may interfere with the effectiveness of the LUCs will be addressed as soon as practicable, but in no case will the process be initiated later than 5 days after the Navy becomes aware of the breach. Immediate notification within 1 hour of discovery is required if

an imminent or substantial endangerment to human health or the environment exists.

(c) Notifies EPA Region 1 and the State of Rhode Island in writing at least six months prior to an anticipated transfer or sale of the property subject to LUCs out of Navy custody and control, including any federal-to-federal transfer, so that EPA Region 1 and the State of Rhode Island can be involved in discussion with the Navy on the appropriate provisions to be included in the transfer terms and conveyance documents to maintain effective LUCs. If it is not possible to notify EPA Region 1 and the State of Rhode Island at least 6 months prior, make this notification as soon as possible, but no later than 60 days before the transfer or sale of any property subject to LUCs. The Navy shall provide a copy of the executed deed or transfer documents to EPA Region 1 and the State of Rhode Island.

(3) Ensures signage is posted and maintained at contaminated properties to restrict access, give notice of LUC restrictions and hazard warnings.

(a) The posted temporary LUC restriction "No Fishing / Shellfishing" signs at Derecktor Shipyard and Gould Island offshore sites.

(b) The posted LUC restriction and hazard warning "No Unauthorized Access - Restricted Area - No Digging - Safety Hazard Present - For Additional Information Contact NAVSTA Environmental 841-7671" signs at various sites.

(4) Performs annual soil testing of the Gate 2 Phytoremediation Area and submits results to DEM.

(5) Reviews and updates this instruction as required.

d. Public Works

(1) Per reference (r), ensure the Project/Planning Checklist or equivalent form for site approvals evaluates the project for activities that disturb soil, sediment, groundwater or surface water, or change the land use at IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4) or buried asbestos debris sites at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP.

(2) Per reference (s), ensure the Work Permit or equivalent form for work not administered by Public Works evaluates the project for activities that disturb soil, sediment, groundwater or surface water or change the land use at IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4) or buried asbestos debris sites at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP. Work permits are required for all new construction, repair, and alteration of Commander Navy Region Mid-Atlantic controlled Class I or II property not administered by the Naval Facilities Engineering Command, Mid-Atlantic.

(3) Ensure site approvals and work permits are endorsed by the Environmental Director or a designated representative.

(4) Ensure prior approval is received from the NAVSTA Newport Environmental Office before proceeding with any activities that disturb soil, sediment, groundwater or surface water, or change the land use at IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4) or buried asbestos debris sites at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP. Requests for approval shall meet the requirements in paragraph 6(b).

(5) Prohibit the application of pesticides, herbicides, and fungicides at IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4).

(6) Cut the grass twice a year at the Gate 2 phytoremediation area and remove all of grass clippings for offsite disposal at a licensed sanitary landfill or solid waste management facility.

(7) Prevent any unauthorized disturbance of the engineered cap that will be installed under Pier 2 as part of the Derecktor Shipyard remedy.

(8) Ensure no construction, restoration, alteration, or demolition of Piers 1 and 2 below the waterline or over the capped area without prior concurrence by EPA and DEM.

e. Security

(1) Patrol, as necessary, the IR sites and other contaminated or LUC restricted properties shown in enclosures (1) through (4) or buried asbestos debris sites at Stillwater Basin, Evans Hall Bldg. 1284 CHI, and Ney Hall Bldg. 292 CP.

(2) Enforce no unauthorized access when posted.

(3) Enforce no fishing or shellfishing in the offshore areas of former Derecktor Shipyard and Gould Island until the CERCLA remedies are complete.

7. Oversight. Land use, site development, and activities that disturb soil, sediment, groundwater or surface water inconsistent with the procedures and requirements in this instruction may result in risk to human health and the environment, and may give rise to civil and criminal liability under Federal law. Thus incidents of this nature should be reported, investigated, and when warranted, appropriate action should be taken to address personal accountability.

D. R. D. BOYER