

April 5, 2024

Via Electronic Mail and U.S. Mail

Col. Ronald Sturgeon
Commander and District Engineer
USACE, Savannah District
100 W. Oglethorpe Ave
Savannah, GA 31401
Ronald.J.Sturgeon@usace.army.mil

Sara Keisler
FUDS Program Manager
USACE, Savannah District
100 W. Oglethorpe Ave
Savannah, GA 31401
c/o cheri.e.dragos-
pritchard@usace.army.mil

Re: Remediation of Formerly Used Defense Site in Cape Hatteras National Seashore
in Buxton, North Carolina

Dear Col. Sturgeon and Ms. Keisler:

On behalf of the North Carolina Coastal Federation and Southern Environmental Law Center, we write to insist that the Army Corps of Engineers fulfill its obligations to remove the petroleum pollution, building fragments, septic systems, and other hazards left behind by the Navy at its formerly used defense site (FUDS) in Cape Hatteras National Seashore near the village of Buxton. Although the Navy is responsible for originally causing the contamination, the Army Corps is responsible for its cleanup. Under the Defense Environmental Restoration Program, 10 U.S.C. § 2701(c)(1)(B), the Department of Defense is responsible for the environmental restoration of FUDS, and it executes this restoration program through the Army Corps of Engineers.¹ The Corps' lack of response to date has unduly delayed urgently needed response measures at the site and placed the health and safety of Seashore visitors at risk. As we continue to gather information and assess our potential legal claims against the Army Corps, we urge the Corps to take immediate action to restore the former Naval site at Buxton, as it should have done in the 1980s, for the welfare of all people who live, work, and vacation in and around the National Seashore.

Our organizations are both nonprofit, public interest entities that have worked for decades to maintain and preserve North Carolina's coastal resources and, in particular, defend Cape

¹ According to the Army Corps' own website, the Department of Defense (DOD) "is responsible for the environmental restoration (cleanup) of properties that were formerly owned by, leased to or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense prior to October 1986. Such properties are known as Formerly Used Defense Sites or FUDS. . . . The U.S. Army Corps of Engineers executes the FUDS Program on behalf of the U.S. Army and DOD. The U.S. Army and DOD are dedicated to protecting human health and the environment by investigating and, if required, cleaning up potential contamination or munitions that may remain on these properties from past DOD activities." U.S. Army Corps of Engineers, Formerly Used Defense Sites Program, <https://www.usace.army.mil/missions/environmental/formerly-used-defense-sites/>.

Hatteras National Seashore from threats to its integrity, including pollution that renders it unsafe and unusable for people and wildlife.

As America's first national seashore, Cape Hatteras National Seashore is an American treasure. Each year, millions of visitors travel from far and wide to the Seashore. They come to swim, fish, surf, boat, and play in the ocean off the coast of the seashore, and to walk, sunbathe, and picnic on the beaches. They come to enjoy the wildlife and to photograph and paint the pristine scenery. Children dig in the sand, build sandcastles, and play with their pets on the shore. Many local residents make their livings in industries that depend on clean beaches and uncontaminated waters, including tourism and commercial fishing. Contamination caused by the Navy that the Army Corps is responsible for remediating is making all these activities unsafe along an extensive stretch of the National Seashore near the village of Buxton.

Petroleum, naphthalene, methylnaphthalene, and other petroleum byproducts and chemicals are seeping onto the beach from where the Navy spilled or stored them between 1956 and 1982. Rising sea levels cause rises in groundwater, which in turn has and will continue to force more petroleum and other long-buried contaminants to the surface. Storms, erosion, and tidal flooding have also unearthed massive concrete building foundations and jagged portions of other structures abandoned by the Navy and the Army Corps in the 1980s. These ruins are now obstructing the beach and causing physical hazards, particularly at high tide where unsuspecting swimmers and surfers could crash into them. Septic system components and an extraordinary number of wires are protruding from the dunes. All these hazards should have been removed by the Corps in the mid-1980s but remain and are now rendering the National Seashore's beach and ocean unsafe and unusable for people and wildlife alike.

The Army Corps is required to remove these dangerous items under its federal legal obligations under the FUDS program, as well as commitments made in writing and further outlined below to the North Carolina Department of Environmental Quality (NCDEQ), to the National Park Service, and, by extension, to the people of North Carolina and the United States.

The Corps must remove the physical structures that it left in place in order to eliminate the physical hazard they pose to people attempting to recreate in the area, especially swimmers and surfers who may not realize what dangers lurk underwater during high tides. The original special use permit granted to the Navy by the National Park Service in 1956 included the condition that the Navy, and by extension the Corps, must "remove all structures, foundations, and pavements, and clean up and restore the site prior to or immediately following termination of use."² The Corps issued an Environmental Assessment and Finding of No Significant Impact in July 1985, in which it acknowledged its obligation to remove the old Navy buildings at Buxton that now litter the beach as hazardous structural fragments and debris. It stated:

"Upon abandonment of the facility by the Navy in 1981, ... the site was transferred from the Navy to the Coast Guard. ... Although the Coast Guard is

² National Park Service, "Special Use Permit Authorizing the Use of Certain Land Within the Cape Hatteras National Seashore, North Carolina, by the Department of the Navy as a Site for a Navy Installation," ¶ 11 (Feb. 9, 1956).

presently using portions of the former Buxton Naval Station, the structures to be demolished were specifically excluded from the Memorandum of Understanding [allowing the Coast Guard to use portions of the site]. The structures have not been put to beneficial use by either the Coast Guard or the National Park Service since abandonment by the Navy in 1981. NPS finds the structures to be unsightly and incompatible with the National Seashore and wishes them to be removed. The structures will be removed under the Defense Environmental Restoration Program (DERP) which is a congressionally directed (Public Law 98-212) program for restoration of active installations and formerly used DOD properties. It includes hazardous and toxic waste disposal . . . and building and debris removal.”³

Further, in an exchange of letters between the Army Corps and the National Park Service between 1984 and 1986, the Corps committed to demolish and remove buildings from the area and restore the site. The buildings to be removed included: Building 19, Building 40, other buildings associated with those two buildings, all utilities serving those buildings including electric, sewer systems, and all appurtenant structures. In an attachment to a letter dated March 12, 1984, the Army Corps was charged with responsibility for ensuring that “[a]ll buildings shall be demolished completely and all debris, including the slab foundations, are to be removed from government property.”⁴ In a letter dated February 21, 1986, the Corps represented that it had completed the demolition and removal.⁵

These documents could not be any clearer – the Corps is responsible for removing the buildings down to their foundations along with all the appurtenant structures. The Corps also acknowledged its responsibility for doing so on multiple occasions, and then claimed to have done so. Today, however, the ocean has eroded the sand and exposed the foundations, utilities, and other structures that were not in fact removed; massive concrete shards, exposed wires, metal bars, and pipes, both on the beach and underwater, are creating dangers for all who visit the area. The Corps must immediately finish the demolition and removal work that it committed to do, and then claimed to have done, decades ago, to restore the beaches of Cape Hatteras National Seashore for safe use by the people who live, work, and vacation there.

Regarding petroleum and other chemicals that persist in the area long after the Navy spilled or otherwise left them there, the Corps must also complete the remediation job that it was required to do. Again, the 1956 special use permit and the 1985 environmental assessment described above clearly created and acknowledged an obligation to clean up hazardous and toxic substances and restore the site before returning it to the National Park Service.

³ Environmental Assessment Defense Environmental Restoration Program, Cape Hatteras National Seashore (Buxton Naval Facility), Buxton, North Carolina, Project No. I04NC000100, at 1 (July 9, 1985).

⁴ “Demolition and Removal of Buildings, Utilities, Roads, Parking Areas and Appurtenant Structures, attached to letter from Lawrence D. Roush, Chief, Resource Management and Visitor Protection, NPS, to Jerry Chandler, U.S. Army Engineers Division – Huntsville (March 12, 1984).

⁵ Letter from Ricky E. Boyd, Corps of Engineers, to Thomas L. Hartman, Superintendent, Cape Hatteras National Seashore, (Feb. 21, 1986).

The Corps has begun the process of removing petroleum and chemical contamination but has not finished it. The Corps committed in its 2021 Management Action Plan for the Buxton site to continue monitoring and “closeout” the remediation project only after “four consecutive monitoring events with contaminant concentrations below NCDEQ groundwater quality standards” were achieved.⁶ In addition, in early 2023, the Corps shared a Final Groundwater Assessment Report with the Superfund Section of NCDEQ, in which it committed that if petroleum hydrocarbons and other pollutants persisted after sampling conducted through September 2023, that the Corps would “evaluate remedial alternatives.”⁷ Clearly, contaminant levels have persisted, as evidenced by sampling and the obvious presence of petroleum and other chemicals staining the beach and being lifted out of the groundwater with every high tide. By simply monitoring contaminant levels and hoping for eventual attenuation, the Corps is not adequately addressing the pollution. The Corps must immediately take remedial action to actually remove the contaminants from the site to safeguard the people who visit, live, and work in and around the National Seashore.

These issues will only become worse if the Army Corps continues to fail to fulfill its responsibilities to remove the hazardous materials and structures. Cape Hatteras National Seashore occupies a string of narrow barrier islands whose rapid erosion is exposing the public to the pollution, building fragments, wires, septic system remains, and other hazards left behind by the Navy and the Army Corps in the 1980s. The barrier islands are particularly vulnerable to increases in sea level rise, hurricanes, and erosion, and these threats are only getting progressively worse because of climate change. Accelerating sea level rise along the Atlantic coast is causing increased coastal erosion rates.⁸ The National Oceanic and Atmospheric Administration 2022 Sea Level Rise Technical Report shows that under the most likely modeling scenarios, Cape Hatteras will experience between approximately 1.7-2.1 feet of sea level rise by 2060.⁹ Due to these rapid rates of sea level rise and shoreline erosion in the area, the beachfront is receding at a rate of up to 12.4 feet per year in Buxton generally and approximately four to six feet each year in the specific vicinity of the former naval base.¹⁰ Coastal erosion will also be exacerbated by other climate-induced changes such as increased storm intensity and changes in prevailing currents, both of which are projected to lead to increased erosion and beach loss. All these phenomena will only continue to expose the public to more of the hazards left behind by the Navy and Army Corps.

⁶ U.S. Army Corps of Engineers, Buxton Naval Facility Formerly Used Defense Sites Program Management Action Plan, AI-5 (2021).

⁷ Final FY 2022 Groundwater Assessment Report for Buxton Naval Facility, at 11 (March 2023), attached to email from Doug Rumsford, Superfund Section of NCDEQ, to Stephen Fox, Carl Dokter, Tracey Tapley, and Raymond Livermore, U.S. Army Corps of Engineers (Feb. 9, 2023).

⁸ See Stephen P. Leatherman et al., *Sea Level Rise Shown to Drive Coastal Erosion*, 81 EOS 55, 56 (2000); Roshanka Ranasinghe et al., *Climate Change Impact Assessment for Inlet-Interrupted Coastlines*, 3 Nature Climate Change 83 (2013).

⁹ Sea Level Rise Viewer for Cape Hatteras, NC, <https://coast.noaa.gov/slr/#/layer/slr> (select “local scenarios;” then search “Cape Hatteras, NC”; Intermediate and Intermediate-High modeling scenarios) (last visited May 24, 2023) (see <https://perma.cc/EDS3-ENNR>).

¹⁰ Online GIS Layer, *Erosion Rates (2020) – Oceanfront*, N.C. Div. Coastal Mgmt., <https://ncdenr.maps.arcgis.com/home/item.html?id=64fe39e71e5747e4859c44b42f7ad7a4>.

Col. Ronald Sturgeon et al.

April 5, 2024

Page 5

For these reasons, the Corps cannot continue to delay. It must take action immediately, before persistent coastal storms continue to exacerbate the situation and before the tourist season reaches its peak and thousands of people are harmed.

Thank you,



Julie Youngman
Senior Attorney



Dr. Braxton Davis
Executive Director
North Carolina Coastal Federation

Cc:

Carol Peterson, Naval Facilities Engineering Systems Command, Mid-Atlantic
(carol.a.peterson18.civ@us.navy.mil)

Dave Hallac, Superintendent, Cape Hatteras National Seashore (David_Hallac@NSP.gov)