



June 5, 2024

*Via electronic mail*

The Honorable David Rouzer, Chairman  
House Subcommittee on Water Resources and Environment  
[ryan.hambleton@mail.house.gov](mailto:ryan.hambleton@mail.house.gov)

The Honorable Grace F. Napolitano, Ranking Member  
House Subcommittee on Water Resources and Environment  
[ryan.seiger@mail.house.gov](mailto:ryan.seiger@mail.house.gov)

Re: Remediation of Formerly Used Defense Site at Buxton, NC, within Cape Hatteras National Seashore

Dear Chairman Rouzer and Ranking Member Napolitano:

We are writing to call your attention to an ongoing crisis involving petroleum pollution, large building fragments, septic system remnants, and other physical and chemical hazards abandoned along the shoreline of Cape Hatteras National Seashore at the site of former U.S. Navy and U.S. Coast Guard facilities in Buxton, North Carolina, as shown in the photographs below. We are concerned that the U.S. Army Corps of Engineers (“the Corps” or “USACE”) has not remediated the dangers left behind by the Department of Defense (“DOD”) and by its insistence that it lacks the authority to do most of the work necessary to restore the site. We ask that the subcommittee conduct oversight and, if necessary, authorize the Corps to remediate the hazards and restore this treasured unit of the National Park System.



National Park Service photo, March 26, 2024



National Park Service photo, March 26, 2024

## OVERVIEW

According to the Corps' own website, "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."<sup>1</sup>

The Buxton Beach Access site where the ongoing petroleum contamination, building debris, and other chemical and physical hazards are located has a well-documented history as a FUDS, which is summarized on this National Park Service [website](#).<sup>2</sup> Briefly, the U.S. Navy developed and used the approximately 50-acre site at the end of Old Lighthouse Road in Buxton, within Cape Hatteras National Seashore, as a submarine monitoring station from 1956 to 1982 under a Special Use Permit issued by the National Park Service ("NPS"). Then the U.S. Coast Guard occupied and used portions of the site as a logistical, communication, medical, and supply support center between 1984 and 2010 under a Memorandum of Understanding with the NPS.



National Park Service photo showing Buxton FUDS in 1984

The original Special Use Permit granted to the Navy by the NPS in 1956 included the condition that the Navy must "remove all structures, foundations, and pavements, and clean up and restore the site prior to or immediately following termination of use." Although the Corps has done some remediation work at the site in the past, the beach and coastal dunes at the site have, predictably, eroded in recent years, resulting in the foreseeable exposure of a considerable amount of infrastructure debris as well as petroleum contamination of the National Seashore beach, as shown in the March 2024 photographs above and in numerous other photographs on the NPS's Flickr webpage.<sup>3</sup> The exposed debris and petroleum are compelling evidence that the Navy did not completely remove all the pollution it was obliged to remove and restore the site as required by those documents.

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<sup>1</sup> U.S. Army Corps of Engineers, Formerly Used Defense Sites Program, <https://www.usace.army.mil/missions/environmental/formerly-used-defense-sites/>.

<sup>2</sup> National Park Service, Cape Hatteras National Seashore: Buxton Beach Access, <https://www.nps.gov/caha/learn/news/buxton-beach-access.htm>.

<sup>3</sup> Flickr, <https://www.flickr.com/photos/capehatterasnps/albums/72177720315007485/with/53556068533>.

In 1991, the former Navy facility property was determined to be a FUDS property and eligible for remediation under the Defense Environmental Restoration Program (10.U.S.C. § 2701). Pursuant to 10 U.S.C. § 2701(c)(1)(B), DOD is responsible for the environmental restoration of FUDS, and it executes this restoration program through the Corps. Although the Army Corps of Engineers, Savannah District, is aware of the petroleum contamination and abandoned infrastructure at the site, thus far the Corps' response to addressing these concerns has been limited. The Corps has conducted some remediation activities at the site in the past, including removal of some of the oil-contaminated soil and above-ground portions of buildings in the 1980s and removal of a single 70-foot section of pipe in recent weeks, and it continues to monitor groundwater quality for petroleum-related contaminants, yet much pollution and dangerous debris remains to be removed.

### CURRENT SITUATION

Years after military use of the site, the Buxton FUDS site has become a popular beach access at the National Seashore, offering a 50-car parking area, portable restrooms, and an accessible pathway to the beach. Millions of people visit Cape Hatteras National Seashore each year, and the beach in the Buxton area in particular has consistently ranked as one of the best beaches in America.<sup>4</sup> However, after experiencing beach erosion from Tropical Storm Idalia and Hurricane Lee in 2023, the NPS announced in September 2023 that it had been forced to close a section of the beach in the vicinity of the Buxton FUDS as a precautionary measure after visitors reported a strong smell of petroleum at the site and erosion uncovered petroleum-contaminated sand and hazardous remnant infrastructure on the beach associated with the former Navy and Coast Guard bases.<sup>5</sup>

Subsequent sediment samples taken in early September 2023 by the Coast Guard's Spill Response staff came back positive for petroleum hydrocarbons with characteristics of light fuel oil and lubricating oil. This prompted the Dare County Department of Health and Human Services—in conjunction with the Corps, the NPS, and the Division of Public Health of the North Carolina Department of Health and Human Services—to issue a health advisory on September 2, 2023, alerting the public to the potential health risks related to petroleum contamination and to the remnants of previous Navy and U.S. Coast Guard installations at the site. In addition, the Seashore filed two reports with the Environmental Protection Agency's National Spill Response Center and notified the Corps and North Carolina Department of Environmental Quality ("NCDEQ").<sup>6</sup>

Continued storm activity exposed an enormous amount of debris on the beach, including the concrete foundations of several Navy buildings, septic drain pipes, wires, rebar, and other debris from Navy buildings, most of which was supposed to have been removed by the Corps in the 1980s.

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<sup>4</sup> *E.g.*, Dr. Beach, 2023 Top Ten Beaches, <https://www.drbeach.org/#/5-lighthouse-beach-buxton-outer-banks-of-north-carolina/>.

<sup>5</sup> National Park Service, Cape Hatteras National Seashore, News Release: "Cape Hatteras National Seashore temporarily closes stretch of beach after conducting post-storm assessments," Sept. 1, 2023, <https://www.nps.gov/caha/learn/news/cape-hatteras-national-seashore-temporarily-closes-stretch-of-beach-after-conducting-post-storm-assessments.htm>.

<sup>6</sup> National Park Service, Cape Hatteras National Seashore, Buxton Beach Access, <https://www.nps.gov/caha/learn/news/buxton-beach-access.htm>.



National Park Service photo, February 26, 2024



National Park Service photo, February 26, 2024

On March 24, 2024, the NPS announced it had expanded the size of the previously closed beach area due to new reports of petroleum odors and sheen on the ocean water.<sup>7</sup> And the Dare County Department of Health and Human Services issued—again, in conjunction with the Corps, the NPS, and North Carolina Department of Health and Human Services—a health advisory warning the public of the health hazard(s) associated to the petroleum contamination as well as with the remnants of infrastructure on the beach at the site.<sup>8</sup>

On March 28, 2024, the Corps announced it had completed its evaluation of the Buxton Beach contamination. The Corps announced in a press release that it had not been able to verify the source of the petroleum contamination and “remedial action [of the contamination] using the FUDS Program is not authorized due to an unknown source.”<sup>9</sup> The press release additionally stated that “the concrete structures that were uncovered after years of erosion on the beach were not associated with the petroleum or the initial cleanup of the area that occurred in the 1990s and that the Corps had therefore determined that those remnants are currently ineligible for removal under the FUDS Program.” The Corps finally released the report to the public nearly two months later, and the report reiterates the Corps’ position that it “has not been able to establish a source of contamination on Buxton Beach or further inland beyond the beach dunes.”<sup>10</sup> The report perpetuates the unfounded idea that the contamination may have washed ashore from unknown sources and recommends that the Corps only “continue to evaluate the project area for eligible activities and/or actions that can be taken under the FUDS program.”<sup>11</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Dare County, Precautionary Public Health Advisory (due to impacts from petroleum contaminated soils likely exposed by beach erosion), <https://www.darenc.gov/Home/Components/News/News/8551/>.

<sup>9</sup> US Army Corps of Engineers, Savannah District Website, Corps of Engineers completes report on Buxton Beach contamination, March 28, 2024, <https://www.sas.usace.army.mil/Media/News-Releases/Article/3723131/corps-of-engineers-completes-report-on-buxton-beach-contamination/>.

<sup>10</sup> U.S. Army Corps of Engineers, Savannah District, Final Summary Report: Report of Findings September 2023 to February 2024 at Buxton Navy Facility Formerly Used Defense Site I04NC0001, executive summary (May 2024).

<sup>11</sup> *Id.* at 10-13.

The Corps has provided no evidence suggesting that the oily substance seeping out of the eroding dune face and the considerable amount of infrastructure debris (e.g., concrete foundations, septic drain field pipes, wires, rebar, etc.) emerging from the dune onto the beach at this site could have possibly originated from any other location or source. The compelling evidence at the site indicates that the source of the contamination and debris is the Buxton Naval Site FUDS. The fact that the Corps previously failed to detect, remediate, or anticipate the future emergence of the contamination and debris does not absolve the Corps of responsibility for addressing these conditions now.



National Park Service photo, September 28, 2023



National Park Service photo, September 9, 2023

The Corps' limited action to address this situation has prompted a variety of local and state government entities and nongovernmental organizations to communicate their concerns to the Corps. We have attached several of these documents for your consideration, including:

- A resolution by Dare County Board of Commissioners Requesting Immediate Action to Rectify the Discharge of Oil into the Atlantic Ocean and Adjoining Shoreline, Remove Derelict Infrastructure and Restore the Buxton Beach Access to Its Pre-military Condition to Protect the Environment and Public and Safety, dated March 4, 2024. (Enclosure 1).
- A Notice of Regulatory Requirement for Contaminant Assessment and Cleanup, sent by NCDEQ to USACE and the US Navy, dated April 17, 2024. (Enclosure 2).
- A letter from the North Carolina Coastal Federation (“NCCF”) and the Southern Environmental Law Center (“SELC”) to the Army Corps of Engineers, Savannah District Office, regarding Remediation of Formerly Used Defense Site in Cape Hatteras National Seashore in Buxton, North Carolina, dated April, 5, 2024. (Enclosure 3).
- A letter from the Outer Banks Chamber of Commerce, dated April 1, 2024 (Enclosure 4)

- An on-line petition prepared by the Buxton Civic Association to Demand the US Army Corp of Engineers Take Immediate Action on Buxton Beach Hazards, started April 17, 2024.<sup>12</sup>

On April 30, 2024, the Corps sent a letter (Enclosure 5) to SELC and NCCF in response to their April 5th letter of concern. In its response, the Corps indicated it would “remove a pipe [extending from the dune onto the beach] that has been reported to have petroleum odor and will conduct sampling around the pipe to determine if this is the potential source of petroleum.” The letter continues with: “Regarding remnant infrastructure, USACE authority is limited to removing and demolishing unsafe buildings and structures *that existed at the time the property was transferred from DoD control*. The infrastructure that is currently being exposed by erosion was sound when transferred out of DoD control in 1982; therefore, *such structures are not eligible to be addressed through the FUDS program*.” (Emphasis added.)

In early May 2024, the Corps awarded a \$525,000 contract to remove a single 70-foot long section of exposed pipe and test the sand in its immediate vicinity for petroleum but no other contaminants.<sup>13</sup> At a public meeting on May 14, 2024, representatives of the Corps confirmed that that contract did not include remediation of any contamination revealed by that testing, nor did it include any removal and testing around any other pipes or remnant infrastructure or testing for other contaminants. Moreover, the Corps’ representatives reiterated their belief that the Corps did not have authority to remove the hazardous infrastructure littering the National Seashore under the FUDS program and that the Corps would not be removing the foundations, wires, septic system remnants, and other physical infrastructure unless their presence hindered investigation of the petroleum contamination.<sup>14</sup> The Corps suggested that citizens reach out to Congress to request authorization of the necessary remediation.<sup>15</sup>

The Corp’s denial of responsibility for removing the infrastructure debris is, in our view, inconsistent with both the law and good public policy. The Corps has consistently denied DOD’s longstanding obligation to remove all structures, including foundations, and restore the site, as required under the Special Use Permit issued by the NPS that allowed the Navy to use the site and as acknowledged in an exchange of letters between the Corps and the NPS in the 1980s. The considerable amount of infrastructure debris on the beach and buried in the dunes and elsewhere on the property is clearly a remnant of Navy use of the site and compelling evidence that the Navy did not completely remove all structures, including foundations, and restore the site, as required.

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<sup>12</sup> Change.org, Petition to Demand the US Army Corp of Engineers Take Immediate Action on Buxton Beach Hazards, [https://www.change.org/p/demand-the-us-army-corp-of-engineers-take-immediate-action-on-buxton-beach-hazards?recruiter=1336717569&recruited\\_by\\_id=0ee26e80-fcd8-11ee-af96-81ad119839da&utm\\_source=share\\_petition&utm\\_campaign=share\\_for\\_starters\\_page&utm\\_medium=copylink](https://www.change.org/p/demand-the-us-army-corp-of-engineers-take-immediate-action-on-buxton-beach-hazards?recruiter=1336717569&recruited_by_id=0ee26e80-fcd8-11ee-af96-81ad119839da&utm_source=share_petition&utm_campaign=share_for_starters_page&utm_medium=copylink).

<sup>13</sup> Joy Crist, Corps of Engineers outlines current efforts to remediate Buxton Beach at public meeting, Island Free Press, (May 15, 2024), <https://islandfreepress.org/outer-banks-news/corps-of-engineers-outlines-current-efforts-to-remediate-buxton-beach-at-public-meeting/>.

<sup>14</sup> Dare County, Meeting Regarding Formerly Used Defense Site in Buxton (May 14, 2024), <https://www.youtube.com/watch?v=j11157s97rg> (see minute 25:48-29:04, 37:32-37:45, 1:11:30 to 1:12:58; 1:38:25-1:39:10).

<sup>15</sup> *Id.* at minute 1:15:55-1:16:11.

Similarly, the Corps has consistently asserted that it does not have the authority to remove the debris and restore the site, citing to its interpretation of the FUDS program.

Cape Hatteras is the nation’s first National Seashore and is an enormously popular destination for tourists. Each year, millions of people visit the Seashore, mostly during the summer months.<sup>16</sup> Now, as the “beach season” begins, the Corps’ refusal to do more than continue to investigate possible sources of petroleum pollution—with no identified plans to remediate the petroleum and any other toxic pollution left behind by the Navy nor to remove the slew of building remnants from the Buxton Naval Facility FUDS that now litter the beach, all of which clearly originated from the FUDS-designated Buxton Naval Facility—is deeply troubling to us, to the Hatteras community, and to Seashore visitors.

In addition to the obvious public safety and environmental concerns, the lack of action is generating considerable negative publicity about the safety and cleanliness of the once-popular Buxton Beach Access, which remains closed indefinitely. For example, as stated in the headline of a locally important regional newspaper, “[The beach] smells like a gas station: Hatteras Island beach hazards remain without a clear path to clean.”<sup>17</sup> The local economy and the residents and small businesses who depend on tourism for their livelihoods are already suffering as vacationers cancel plans.<sup>18</sup>



National Park Service photo, March 27, 2024

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<sup>16</sup>Island Free Press, Cape Hatteras National Seashore reports more than 331,000 visitors during the first three months of 2024, April 26, 2024, <https://islandfreepress.org/outer-banks-driving-on-the-beach/cape-hatteras-national-seashore-reports-more-than-331000-visitors-during-the-first-three-months-of-2024/#:~:text=Per%20statistics%20from%20the%20Outer,less%20than%20record%2Dbreaking%202021.>

<sup>17</sup> Corinne Saunders, Virginia-Pilot (Feb. 22, 224), [https://www.yahoo.com/news/smells-gas-station-hatteras-island-200400217.html?fr=sycsrp\\_catchall.](https://www.yahoo.com/news/smells-gas-station-hatteras-island-200400217.html?fr=sycsrp_catchall)

<sup>18</sup> Dare County, Meeting Regarding Formerly Used Defense Site in Buxton (May 14, 2024), <https://www.youtube.com/watch?v=jI1157s97rg> (see minute 59:48—1:03:02).

### **ACTION REQUESTED**

We respectfully request that the House Subcommittee on Water Resources and Environment conduct oversight on the lack of adequate action on the part of the Army Corps of Engineers to address petroleum contamination, all other chemical contamination, and building debris originating from the FUDS-designated former Naval facility at the Buxton Beach Access within Cape Hatteras National Seashore. We specifically request that you evaluate the Corps' assertion that it lacks the authority and funding to remove hazardous infrastructure debris from the beach and underground, and then take any additional appropriate steps to resolve any shortfall in the Corps' authority and funding. We hope that such oversight will include a briefing on the situation from the responsible federal agency representatives: Col. Ronald Sturgeon, Commander and District Engineer, USACE, Savannah District, and Superintendent David Hallac, Cape Hatteras National Seashore, NPS.

In closing, with the summer beach season beginning, the Corps cannot continue to delay addressing the ongoing public health and environmental hazards at Cape Hatteras National Seashore and its Buxton Beach. We would greatly appreciate your attention to these concerns, and we ask that you conduct oversight and grant the Corps the authority and funding necessary to fully remediate *all* of the contamination—both chemical and physical—at the Buxton FUDS.

Respectfully,

Robert Outten  
Dare County Manager and Attorney

Julie Furr Youngman  
Elizabeth Rasheed  
Southern Environmental Law Center

Braxton Davis  
Alyson Flynn  
North Carolina Coastal Federation

Brian Harris  
Heather Jennette  
Wendi Munden  
Jeff Dawson  
Jason Hall  
Buxton Civic Association

Philip A. Francis  
Chair  
The Coalition to Protect America's National  
Parks

Karen S. Brown  
President & CEO  
Outer Banks Chamber of Commerce

Lee Nettles  
Executive Director  
Outer Banks Visitors Bureau

Richard Tolson  
President  
Outer Banks Association of Realtors

Sarah Damron  
Senior Regional Manager  
Surfrider Foundation

Jeff Hunter  
Southern Appalachian Director  
National Parks Conservation Association

Jessica Barnes  
Director  
Outer Banks Forever



## Enclosures

cc (via electronic mail, with enclosures):

Congressman Gregory Murphy, 3<sup>rd</sup> District, North Carolina

Senator Ted Budd, U.S. Senator for North Carolina

Senator Thom Tillis, U.S. Senator for North Carolina

Congressman Sam Graves, Chairman, House Comm. on Transportation & Infrastructure

Congressman Rick Larsen, Ranking Member, House Comm. on Transportation & Infrastructure

Congressman Bruce Westerman, Chairman, House Comm. on Natural Resources

Congressman Raul Grijalva, Ranking Member, House Comm. on Natural Resources

Senator Thomas R. Carper, Chairman, Senate Comm. on Environment & Public Works

Senator Shelly Moore Capito, Ranking Member, Senate Comm. on Environ. & Public Works

Senator Joe Manchin, Chairman, Senate Comm. on Energy and Natural Resources

Senator John Barrasso, Ranking Member, Senate Comm. on Energy and Natural Resources

Elizabeth S. Biser, Secretary for the Environment, N.C. Department of Environmental Quality

John Nicholson, Chief of Staff, Environmental Protection Agency, Region 4

Carol Peterson, Naval Facilities Engineering Systems Command, Mid-Atlantic

Col. Ronald Sturgeon, Commander and District Engineer USACE, Savannah District

Glenn Marks, Savannah District Reimbursable Branch Chief

Sara Keisler FUDS Program Manager USACE, Savannah District

Kyle Lewis, Senior Environmental Assistant District Counsel, USACE, Savannah District

David Hallac, Superintendent, Cape Hatteras National Seashore, National Park Service

Mark Foust, Regional Director, Region 2, National Park Service

Charles F. Sams, III, Director, National Park Service

Joyce Stanley, USDOJ, OEPC, Regional Environmental Officer

Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, USDOJ