



# Brevard County Board of County Commissioners

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Legislation Text

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**File #:** 5479, **Version:** 1

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### **Subject:**

Consideration, re: Department of the Army Right-of-Entry for Environmental Assessment and Response for the Naval Air Station Banana River Off-Base Disposal Area designated as a Formerly Used Defense Site (FUDS) - District 4

### **Fiscal Impact:**

None

### **Dept/Office:**

Public Works/Engineering and Natural Resources Management Department

### **Requested Action:**

It is requested that the Board of County Commissioners review and consider the United States Army Corps of Engineers' (USACE) request to sign the Right-of-Entry (ROE) for Environmental Assessment and Response for the area formerly known as the Naval Air Station Banana River Off-Base Disposal Area, and provide direction to the County Manager for further action.

### **Summary Explanation and Background:**

USACE manages the Defense Environmental Restoration Program for FUDS on behalf of the Department of Defense and has requested a ROE, on behalf of its contractor, to perform environmental testing and potential response in the Rights-of-Way (ROW) for the area formerly known as the Naval Air Station Banana River Off-Base Disposal Area located south of Patrick Space Force Base in unincorporated Satellite Beach. USACE, pursuant to its policies, does not obtain local agency permits to conduct this type of work. Instead, it requests governmental entities, in this case the County, as a property owner, to sign its ROE form granting it, and its contractors, access to sites. The ROE would grant USACE authority to conduct any testing and remedial activities in the ROW that it deems necessary without requiring prior County approval, concurrence, or inspection. However, pursuant to the ROE, USACE will coordinate activities with the County at least fourteen days prior to the start of work. Given the sensitive nature of the request and potential impacts to homeowners as well as the traveling public, staff decided it was prudent to request Board direction.

The ROW in this area ranges from 50 feet to 80 feet in width, which could mean the potential for large excavations, road closures and detours, deconfliction with multiple utilities, semi-permanent/permanent monitoring wells inside County ROW, etc. As understood, there will be several steps in the process, the first being testing and, depending on what issues are encountered, remedial activities that may vary greatly depending on the nature and extent of any contamination found. USACE advised staff that the ROE cannot be modified for any reason, including our request of a phased approach in which they would be required to brief us on their findings prior to receiving permission to excavate. However, USACE indicated they require the flexibility to perform any and all work necessary without delay. In addition, their ROE form requires a 90-day

notice in order for the County to revoke their entry, but with the potential for costs incurred by USACE and its contractor/s to be assessed against the County for early termination. The ROE also does not include any of the County's indemnification language that would normally appear if the permitting process outlined in Chapter 86, Brevard County Code, was followed.

As described in the ROE, access to County-owned property is limited to the following purposes: "investigation of the property for potential contamination related to former Navy disposal activities, including but not limited to operating geophysical equipment, digging test pits and/or selected objects to identify them, and collecting environmental samples including constructing, operating, maintaining, and removing groundwater monitoring wells and other devices for monitoring and/or collecting soil, air, and water samples." The lands affected are "...all of the tracts or parcels of land lying and being in the ROW shown in Exhibit A [of the ROE] within an unincorporated area of Satellite Beach, Florida." The ROE, including the referenced Exhibit A, is attached hereto for reference, along with handouts that were provided by USACE.

It is also important to note that while the requested action is for USACE and its contractor/s to access the County's ROW, they will likely also affect unincorporated Brevard County constituents' private property of which USACE will coordinate with affected owners directly for permission and access. As USACE requested and received the Florida Department of Environmental Protection's concurrence in starting the geophysical investigation (ground penetrating radar) while regulatory review of the Uniform Federal Policy - Quality Assurance Project Plan or "work plan" continues and is hosting a "community drop-in" between 3:30 pm and 7:30 pm on Thursday, February 16, 2023, at the Pelican Beach Club House (1495 A1A, Satellite Beach), staff felt it prudent to apprise the Commission of the USACE request given the time sensitivity even though they (USACE) are unable to attend this Board meeting to answer potential questions, due to existing commitments. While staff is working to arrange a mutually beneficial time for USACE to address the Commission at a subsequent meeting, they offered the following links for review:

<https://www.youtube.com/watch?v=Cc2lVP0pqBg> and <https://www.saj.usace.army.mil/BananaRiver/>.

County staff has been in contact with USACE by phone, via email, and over Teams meetings to discuss our concerns over many months, and the County submitted a request for consideration to USACE to have certain concerns addressed. That request and their response, which was received January 13, 2023, are also attached for consideration by the Board.

Based on the above sensitivity and timing concerns, the following actions are provided for the Board's consideration:

- A. Delay Decision - The Board delays making a decision until USACE can attend a subsequent Board meeting to provide a short brief and address any concerns.
- B. Accept - The Board accepts USACE's request and authorize the County Manager to sign subsequent documents.
- C. Reject - The Board rejects USACE's request.

Contact: Christine Verrett, Special Projects Coordinator III, 321-350-8328

## **Clerk to the Board Instructions:**

Please forward the Board action to the Public Works Department and Natural Resources Management Department