

United States Army Corps of Engineers
New England District

Final Land Use Control Implementation Work Plan

**Former Fort Devens Army Installation
Devens, Massachusetts**

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Final

Land Use Control Implementation Work Plan

**Former Fort Devens Army Installation
Devens, Massachusetts**

February 2022

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Acronyms and Abbreviations

AOC	Area of contamination
Army	United States Army Corps of Engineers – New England District
BCT	BRAC Clean-up Team
BRAC	Base Realignment and Closure
Devens	Former Fort Devens Army Installation
DoD	Department of Defense
DPW	Department of Public Works
EBS	Environmental Baseline Survey
EC	Engineering control
EPA	United States Environmental Protection Agency
FOST	Finding of Suitability to Transfer
FYR	Five-Year Review
Harding	Harding Environmental Science & Engineering, Inc.
HLA	Harding Lawson Associates, Inc.
IC	Institutional control
ICIAP	Institutional Control Implementation and Assurance Plan
LIFOC	Lease in Furtherance of Conveyance
LTMP	Long-Term Monitoring Plan
LTMMP	Long-Term Monitoring and Maintenance Plan
LUC	Land use control
LUCIP	Land Use Control Implementation Plan
MassDEP	Massachusetts Department of Environmental Protection
MassDevelopment	Massachusetts Development and Finance Agency
ROD	Record of Decision
SA	Study Area
S-A JV	SERES-Arcadis 8(a) Joint Venture 2, LLC

1 Introduction and Purpose

This Land Use Control Implementation Work Plan (Work Plan) was developed to provide guidance for designing stand-alone Land Use Control Implementation Plans (LUCIPs) for sites at the former Fort Devens Army Installation (Devens), located in Devens, Massachusetts. The SERES-Arcadis 8(a) Joint Venture 2, LLC (S-A JV) prepared this Work Plan on behalf of the United States Army Corps of Engineers – New England District (Army), under Contract Number W912WJ-19-D-0014.

This Work Plan is being conducted to ensure current and future protectiveness of the remedies at Areas of Contamination (AOCs) 44 and 52 and AOC 69W. In September 2020, during discussions between the Army and United States Environmental Protection Agency (EPA) concerning the 2020 Final Five-Year Review (FYR) Report for the Former Fort Devens, the Army and EPA came to the conclusion and agreement that the two agencies would not be able to timely resolve outstanding comments to issue joint protectiveness statements and meet the statutory deadline of September 28, 2020. Consequently, the Army and EPA agreed that the two agencies would issue their own protectiveness statements to meet the statutory deadline. Thus, EPA's September 25, 2020 letter (received September 28, 2020) with EPA's protectiveness statements were different from the Army's protectiveness statements released on September 28, 2020 in the Final FYR Report. It was also agreed that, subsequent to the statutory deadline, the Army and EPA would work together to reconcile their differences. In EPA's letters to Army on September 25 and September 29, 2020, EPA issued their independent findings of protectiveness with issues and recommendations that included 19-pages of "Additional Work." EPA's additional work requirements were provided as an attachment to EPA's letter to the Army dated September 29, 2020. On December 11, 2020, the Army submitted a letter and issued a statement of work for the additional work determined by EPA to be necessary to assess the short- and long-term protectiveness of the ongoing remedial actions at the Operable Units evaluated in the Final Fifth 2020 FYR Report (KOMAN Government Solutions, LLC 2020).

As it pertains to this Work Plan and the additional work determined by EPA to be necessary to assess protectiveness, EPA concluded that remedies at four three sites, AOC 43J, AOCs 44 and 52, and AOC 69W were not protective in the long-term as the "current LUCIPs were inadequate for evaluating/verifying remedy performance and effectiveness." The Army disagreed with the assessment that the sites were not protective in the long-term as plans for implementing the land use controls (LUCs) existed, and LUCs have been successfully implemented, enforced, and reported for the past 25 years (including four prior FYRs for AOCs 44 and 52 and AOC 69W). The Army established LUCs in accordance with the Department of Defense's (DoD's) Policy on Land Use Controls Associated with Environmental Restoration Activities (2001). EPA developed guidance for preparing LUCIPs after the LUCs were established in the Records of Decision (RODs), the property was transferred with LUCs and Army Long-Term Monitoring Plans (LTMPs) for LUCs were developed. LUCs for Army retained land, AOCs 44 and 52, are appropriately documented in the Army Real Property Master Plan (RPMP) 2007 Addendum (R&K Engineering 1999, Addendum 2007) and all other LUCs on transferred property were included in the transfer deeds and documented in the Long-Term Monitoring and Maintenance Plan (LTMMP) for implementation (Sovereign and HGL 2015). The LUCs for sites AOCs 44 and 52 and AOC 69W are detailed in Sections 1.1.1 and 1.1.2. Massachusetts Development and Finance Agency (MassDevelopment) maintains the LUCs for AOC 43J; therefore, it is not included in this LUCIP Work Plan.

For the reasons discussed above the Army disagrees with the assessment that the sites were not protective in the long-term but has agreed to perform the additional work determined by EPA to be necessary to assess protectiveness to ensure future protectiveness. This work includes preparing separate stand-alone LUCIPs for sites AOCs 44 and 52 and AOC 69W. The Army also added two additional sites, AOC 57 and Study Area

(SA)-71, for preparation of a LUCIP that EPA did not include in their additional work requirements. The LUCs for sites AOC 57 and SA-71 are detailed in Sections 1.1.3 and 1.1.4.

Each stand-alone LUCIP will follow this LUCIP Work Plan template such that the final LUCIPs for each site will ensure future protectiveness per the Army's 2020 Final FYR Report.

1.1 Project Overview

The LUC program instituted at Devens is a result of the individual RODs issued for each of the AOCs listed below:

- AOCs 44 and 52: Barnum Road Maintenance Yards
 - 1995 ROD by U.S. Army Environmental Center (U.S. Army Environmental Center 1995)
- AOC 69W: Fort Devens Elementary School (Building 215) Fuel Oil Spill Site
 - 1999 ROD by Harding Lawson Associates, Inc. ([HLA] 1999)
- AOC 57: Building 3713 Fuel Oil Spill
 - 2001 ROD by Harding Environmental Science & Engineering, Inc. ([Harding] 2001)
- SA-71: Former Railroad Round House
 - 2015 ROD by Sovereign (Sovereign 2015)

The RODs established site-specific remedial actions for each AOC, as well as the long-term monitoring program and LUCs. The Army has been implementing the LUC Program at Devens since completion of the RODs consistent with the DoD's Policy on Land Use Controls Associated with Environmental Restoration Activities (2001). LUC requirements have been incorporated into all property transfer deeds. The LTMMs or Army RPMP Addendum (2007) further document LUCs for purposes of inspection, compliance, and reporting. The Army reports on the compliance of the LUCs in the annual reports and periodically in FYR Reports (HLA 2000; Nobis Engineering, Inc. 2005; HydroGeoLogic, Inc. 2010; H&S Environmental, Inc. 2015; and KOMAN Government Solutions, LLC 2020). As part of the 2020 FYR, EPA requested that stand-alone LUCIPs be prepared for the sites listed above to ensure continued effectiveness of the remedies.

Upon concurrence of the LUCIP by the EPA and Massachusetts Department of Environmental Protection (MassDEP), the Army will undertake the following implementation actions in compliance with LUC objectives:

- Distribution of the LUCIP to EPA, MassDEP, and MassDevelopment.
- Implement a Notice of Activity & Land Use Limitations pursuant to requirements set forth in 310 CMR 40.1074 and affirmative measures/prohibitive directives.
- Conduct annual LUC inspections.
- Prepare annual LUC compliance reports (to be incorporated in the annual reports, as applicable).

1.1.1 AOCs 44 and 52

AOCs 44 and 52 remain owned and under the control of Army. There are no current or future plans for transfer of property from Army ownership at this time. AOCs 44 and 52 are within the rail, industrial, and trade-related zones of the Devens Reuse Plan (Vanasse Hangen Brustlin, Inc. 1994). The LUCs developed for AOCs 44 and 52 are detailed in the ROD (U.S. Army Environmental Center 1995). Any proposed actions that affect the property must consider the following ROD requirements:

- Assure the Property is not used for residential purposes. If the Army transfers this property by lease or deed, an Environmental Baseline Survey (EBS) will be conducted to ensure that the remedy remains protective by incorporating all necessary environmental protection provisions within the Finding of Suitability to Transfer (FOST) and the property transfer deed.
- Maintain the existing paved areas and storm water collection systems to prevent long-term worker exposure to residual oil contaminated soils 2-5 feet below ground surface associated with AOCs 44 and 52 remedy.
- Assure that Soil Management Plans and Health and Safety Plans are prepared and executed prior to subsurface excavations.
- Any intrusive construction work must consider that residual soil contamination has been documented for AOCs 44 and 52 and that such actions should be coordinated with the Department of Public Works (DPW), the Base Realignment and Closure (BRAC) Environmental Office, and the BRAC Clean-up Team (BCT).

LUCs at AOCs 44 and 52 include a prohibition on residential development/use of the property, prohibition on the removal of the existing 2-foot cover (or asphaltic barrier) (with exemptions/specific requirements for certain activities), and development/implementation of health and safety plan and soil management when excavating soils > 2 feet.

1.1.2 AOC 69W

The Army finalized the FOST for AOC 69W in November 2006 and the property was formally transferred from Army ownership to MassDevelopment in an August 2007 Quitclaim Deed. MassDevelopment later transferred ownership of AOC 69W to the Francis W. Parker Charter Essential School, the current property owner and occupant of the site. A Limited Action ROD was signed in 1999 and has been in effect since (HLA 1999). The ROD and/or deed-specified Environmental Protection Provisions include the following:

- Property Use Restriction – property restricted solely to educational, institutional, and open space uses.
- Groundwater Restriction – access or use ground water underlying the Property for any purpose is prohibited without prior written approval of the Army, EPA, and MassDEP.
- Soil Restriction – soil shall not be excavated from areas of the Property identified as the “Soil Management Area” (see Deed, Exhibit C, Map of Parcel A.15) for any purpose without the prior written approval of the Army, EPA, and MassDEP.
- Modification or Release of Environmental Protection Provisions – the Environmental Protection Provisions shall remain in force until such time as the concentration of petroleum related chemical constituents in the soil and groundwater beneath or on the Property have been reduced to levels that allow for unlimited exposure and unrestricted use as determined by the Army, and approved by the Army, EPA, and MassDEP.
- Project Notifications - any notifications or requests for modifications to the Environmental Protection Provisions shall be made to the Army, EPA, and MassDEP.

The current property owner, Francis W. Parker Charter Essential School, is abiding by the LUCs imposed on the property, and annual groundwater sampling continues as recommended in the current LTMMP. MassDevelopment currently supplies potable water to the school. The Excavated Soil Management Area is monitored during sampling events for broken ground or excavations. The results of the annual groundwater sampling events and annual onsite inspections are reported in the Main Post Annual Reports.

1.1.3 AOC 57

AOC 57 is owned by the Army but is leased to MassDevelopment per a 1996 Lease in Furtherance of Conveyance (LIFOC) agreement. Under the LIFOC agreement, MassDevelopment must comply with the LUCs of the ROD to limit the potential exposure to the residual contaminated soil and groundwater under both existing and future site conditions (Harding 2001). The LUCs ensure that exposure to any remaining contaminated soils beneath the site is controlled and prohibit the groundwater extraction for industrial or potable water supply use.

The Army prepared and submitted a LUC implementation and monitoring plan as part of the site LTMP. LUC inspections are conducted annually per the land use control implementation and monitoring section of the 2015 LTMMMP (Sovereign and HGL 2015). The results of the inspections are reported in the Main Post Annual Reports.

1.1.4 SA-71

SA-71 is owned by the Army but is leased to MassDevelopment per a 1996 LIFOC agreement. Under the LIFOC agreement, MassDevelopment must comply with the LUCs of the ROD to limit the potential exposure to the residual contaminated soil (Sovereign 2015). The LUCs ensure that any soil disturbance activities, such as excavation are performed in accordance with the site-specific Soil Management Plan and Health and Safety Plan, and prohibit residential reuse through the use of a property deed restriction. SA-71 is undeveloped and within the open space/recreational zones of the Devens Reuse Plan (Vanassee Hangen Brustlin, Inc. 1994). The Army anticipates formally transferring ownership of the property to MassDevelopment in the future. Upon EPA and MassDEP concurrence of a site-specific LUCIP for the site, LUC inspections will be conducted annually and the results reported in annual LUC compliance reports.

1.2 Work Plan Organization

This Work Plan is organized as follows.

Table 1: Work Plan Sections

Section	Title	Purpose
Section 1.0	Introduction	Discusses the basis for the LUCIP Work Plan and a brief overview of the project and the sites.
Section 2.0	Background	Discusses objectives, definitions, and details reasons LUCs are established and maintained.
Section 3.0	LUCIP Template	Discusses the format to be used for the site-specific LUCIPs and summarizes the information that will be covered.
Section 4.0	References	Provides a list of references used in the development of the Work Plan.

2 Background

The DoD's Policy on Land Use Controls Associated with Environmental Restoration Activities (2001) defines LUCs as any type of physical, legal, or administrative mechanism that restricts the use of, or limits access to, real property to prevent or reduce risks to human health and the environment. LUCs may be required while conducting environmental restoration investigations, during implementation of remedial actions, or after remedial actions are complete. LUCs help to ensure that future land use remains compatible with the land use that was the basis for the selection of the actions imposed on a site.

LUC¹ strategies can include engineering or non-engineering measures that are designed based on the remaining hazard. Institutional controls (ICs) consist of legal or administrative mechanisms. Legal mechanisms, or ICs, as used in the National Oil and Hazardous Substance Pollution Contingency Plan, consist of enforcing property restriction through ownership (e.g., deed notices, restrictive covenants, negative easements). Administrative mechanisms are essentially regulatory in nature and include notices, local land use plans and ordinances, construction permits, and land use management systems to ensure compliance with use restrictions. Education (e.g., pamphlets, videos, meetings) is commonly used to reduce the risk to property owners or the public from unexpected exposure to hazards. Engineering controls (ECs) include physical mechanisms, such as placing fencing or signage to protect property owners and the public from hazards by limiting access or preventing public access to areas. Physical mechanisms are a useful deterrent to prevent unintentional access to a hazardous site and commonly work in conjunction with non-ECs to provide the best protection to the public.

2.1 LUCIP Work Plan Goals and Objectives

Each site-specific LUCIP will be developed to ensure the effectiveness and reliability of the selected LUCs for as long as any LUC is required to address site risks. The goal of each LUCIP will be to identify the strategy for assuring the short-term and long-term effectiveness of LUCs being relied upon to protect human health and the environment.

This LUCIP Work Plan will:

- Detail a consistent format to be used for each site-specific LUCIP.
- Facilitate agreement on LUCIP contents.

¹ The term LUC refers to the actual LUC instrument which is used to accomplish the LUC performance objectives. LUCs are likely to be a legal mechanism or administrative measure used to impose use restrictions (e.g., permits, orders, restrictive covenants, zoning), but they may also include measures such as fences and guards. LUCs help to minimize the potential for exposure to contamination and/or protect the integrity of a response action and are typically designed to work by limiting land and/or resource use or by providing information that helps modify or guide human behavior at a site. LUCs may be used when contamination is first discovered, when remedies are ongoing, and when residual contamination remains onsite at a level that does not allow for unrestricted use and unlimited exposure after cleanup.

3 LUCIP Template

The EPA has requested that a stand-alone site-specific LUCIP be prepared for each site detailed in Section 1.1. Each site-specific LUCIP will specify the implementation, monitoring, and enforcement of the LUCs specified in the ROD for that site and will be prepared in accordance with EPA's 2012 *Guidance for Institutional Controls: A Guide to Preparing Institutional Control Implementation and Assurance Plans at Contaminated Sites* (hereafter referred to as EPA's 2012 Institutional Control Implementation and Assurance Plan [ICIAP] guidance) and the DOD's 2001 Policy on Land Use Controls Associated with Environmental Restoration Activities. To ensure each LUCIP is consistently developed with the same contents and level of detail, a template has been developed, as detailed below.

Table 2: LUCIP Template

Section	Title	Purpose
Section 1.0	Introduction	Identifies the site name and location, name of the organization who prepared the document, the agency responsible for oversight, and the organizational structure of the document.
Section 2.0	Site Details	Summarizes the site characteristics, site history, property information, and stakeholder contacts.
Section 3.0	Key Elements for all Planned/Implemented Institutional Controls	Develops an IC relationship matrix and identifies each IC, the substantive use restriction(s) achieved by each IC, and the legal description of the restricted area(s).
Section 4.0	Institutional Control Maintenance Elements	Summarizes the assurance monitoring and reporting process of each IC.
Section 5.0	Institutional Control Enforcement Elements	Discusses enforcement-related information for addressing various events including improper or incomplete IC implementation or maintenance, and reports of an IC breach/violation.
Section 6.0	Institutional Control Modification and Termination Elements	Provides information on modifying or terminating an IC.
Section 7.0	Appendices	Provides the LUC Checklist used for annual IC assurance monitoring, and copies and/or references to any relevant documents with information on ICs or that are discussed in the LUCIP. Also provides a list of references used in the development of the LUCIP.
Figures		Illustrates residual contamination, IC boundaries, and other site features.

The following sections briefly summarize the proposed content of each LUCIP section, including a reference to the applicable section of EPA's 2012 ICIAP guidance.

3.1 Section 1.0: Introduction

The introduction section will be prepared in accordance with Section C, 1.0 of EPA's 2012 ICIAP guidance and will include the site name and location, including the EPA Region; the name of the organization who prepared the document; the agency responsible for oversight; and the organizational structure of the document.

3.2 Section 2.0: Site Details

To the extent applicable for each site, this section will include three subsections that provide a description of site characteristics, a brief site history, and property information and stakeholder contacts.

3.2.1 Section 2.1: Site Description

This section will be prepared in accordance with Section C, 2.1 of EPA's 2012 ICIAP guidance and will provide a description of the basic site characteristics, including the following:

- Name of the site and any site descriptors.
- Parcel number(s), coordinates, and/or street address of the site.
- Size (e.g., in acres) of the entire site as well as the size of the contaminated area(s) if they extend beyond site boundaries. To the extent possible, this section will also describe the area or volume of each medium that contains, or is expected to contain, residual contamination.

This section will also provide a description of the restrictions designed to help ensure protectiveness.

3.2.2 Section 2.2: Site History

This section will be prepared in accordance with Section C, 2.2 of EPA's 2012 ICIAP guidance and will provide a brief discussion of the site history, including the following:

- Description and history of previous site operations and land uses.
- Contaminants of concern for each contaminated medium.
- Identification of primary health threats and/or impacted resources that have been or potentially could be affected.
- Summary of the response actions already conducted or planned in the future at the site, including the implementation status of ICs.
- List of goals or objectives that the overall response action will achieve, as defined in the site decision documents.
- Land and/or resource use restrictions that IC(s) are meant to achieve to meet the overall cleanup objectives for the site.
- Summary of the current and reasonably anticipated future land uses for the site.

3.2.3 Section 2.3: Property Information and Institutional Control Stakeholder Contacts

This section will be prepared in accordance with Section C, 2.3 of EPA's 2012 ICIAP guidance and will provide property and contact information for all relevant IC stakeholders. This section will include the following:

- Parcel owner recorded in the local land records, including title and property tax records, as the property owner of each impacted parcel and current lessees/sub-lessees.
- Identity of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights).
- Contact information for each responsible party.
- Contact information of relevant governmental organizations, such as municipalities, health agencies, or zoning boards.
- Other relevant stakeholders that have IC responsibilities, are potentially impacted by their use, or are otherwise interested in their status (e.g., community organizations).

3.3 Section 3.0: Key Elements for all Planned/Implemented Institutional Controls

To the extent applicable for each site, this section will identify each IC, the substantive use restriction(s) achieved by each IC, and the legal description of the restricted area(s).

3.3.1 Section 3.1: General Elements

This section will be prepared in accordance with Section C, 3.1 of EPA's 2012 ICIAP guidance and will summarize the general elements of each IC, including the following:

- Formal title of the planned/implemented IC (e.g., "Declaration of Environmental Restrictive Covenant").
- Specific type of planned/implemented IC instrument (e.g., an easement, administrative order, or fish consumption advisory).
- Contact information of the person(s) and/or organization responsible for implementing the IC.
- Schedule of events that are intended to effectuate implementation of the IC (e.g., recording of a covenant with the County Register of Deeds for a proprietary control) with planned or actual implementation dates and the location where the IC is recorded (if applicable).
- Specific substantive use restrictions highlighted in the decision documents (e.g., prohibit groundwater well installation over contaminated plume) that are achieved by implementation of this specific IC.
- Legal description of all restrictions.
- Whether the IC instrument is expected to be permanent or temporary. If temporary, the conditions for termination.
- For ICs that have not yet been implemented, any legal, administrative, or procedural issues that may need to be addressed to implement the IC.

3.3.2 Section 3.2: Elements Specific to Instrument Category

This section will be prepared in accordance with Section C, 3.2 and the subsections of 3.2 in EPA's 2012 ICIAP guidance and will identify, as applicable, the instrument category for the planned/implemented ICs. The instrument categories are proprietary controls, government controls, enforcement and permit tools with IC components, and informational devices.

3.3.3 Section 3.3: Institutional Control Relationship Matrix

This section will be prepared in accordance with Section C, 3.3 and Appendix B of EPA's 2012 ICIAP guidance and will include an IC relationship matrix table which will illustrate the properties of each IC identified for a site.

3.4 Section 4.0: Institutional Control Maintenance Elements

To the extent applicable for each site, this section will summarize assurance monitoring and the reporting process of each IC.

3.4.1 Section 4.1: Institutional Control Assurance Monitoring

This section will be prepared in accordance with Section C, 4.1 of EPA's 2012 ICIAP guidance and will identify the following monitoring elements:

- Contact information of the person(s) and/or organization responsible for monitoring the ICs.
- How often site inspections and/or IC monitoring events will be conducted.
- The discrete activities that will be considered IC monitoring (e.g., site inspections, title searches).
- Specific events that will be monitored, including changes in land use, property transfers, and breaches to implemented ICs.

3.4.2 Section 4.2: Reporting

This section will be prepared in accordance with Section C, 4.2 of EPA's 2012 ICIAP guidance and will describe the procedures and persons and/or organizations responsible for keeping records and reporting information to the appropriate regulatory authorities. The section will describe the reporting process including:

- How IC information will be recorded, including media and format.
- How often IC reporting will take place.
- Specific events that will be reported, including changes in land use, property transfers, and breaches to implemented ICs.
- Address of records repository and any potential procedures that should be followed to access this repository.
- Person or organization that will report IC information to the appropriate regulatory authority.
- Contact information for the person or organization that will receive IC reports.

3.5 Section 5.0: Institutional Control Enforcement Elements

To the extent applicable for each site, this section will detail enforcement-related information for addressing various events including improper or incomplete IC implementation or maintenance, and reports of an IC breach/violation.

3.5.1 Section 5.1: Enforcement Entities and Procedures

This section will be prepared in accordance with Section C, 5.1 of EPA's 2012 ICIAP guidance and will identify events that trigger enforcement actions, the enforcement entities, and the procedure for notifying the enforcement entities in the event of a breach. The contents of this section will include the following:

- Specific events that trigger enforcement actions to take place (e.g., breach/violation of IC, improper maintenance, failure to report, etc.).
- The entity responsible for rectifying the breach/violation.
- Specific tasks and intended deadline for rectifying an IC breach/violation.
- The entity charged with enforcing each IC for each triggering event and the procedures for notifying that entity in the event of a breach.
- The specific statutory or contractual authority (e.g., state IC laws, agency order or agreement, voluntary cleanup program agreement) authorizing an entity to enforce implementation and maintenance of an IC.
- The specific plans to prevent unacceptable exposures if ICs cannot be implemented or are otherwise not sufficient in protecting human health and the environment (e.g., need to amend the decision documents).
- Identify any entities that have provided financial assurances to implement and maintain ICs throughout their intended lifespan.

3.6 Section 6.0: Institutional Control Modification and Termination Elements

To the extent applicable for each site, this section will be prepared in accordance with Section C, 6.0 of EPA's 2012 ICIAP guidance and will provide information on modifying or terminating an IC. The contents of this section will include the following:

- The person or organization responsible for modifying ICs.
- The person or organization responsible for terminating ICs.
- The process for modifying ICs and notifying the appropriate regulatory authorities if site conditions or other circumstances change.
- Role of ICs when waste is left in place above cleanup levels or when needed as a temporary measure until cleanup levels are reached for all media.
- The process for terminating ICs.

3.7 Section 7.0: Appendices

The appendices in each LUCIP will include a site-specific LUC Checklist that will be used annually for IC assurance monitoring; see Appendix A for an example checklist. In accordance with Section C, 7.0 of EPA's 2012 ICIAP guidance, the appendices may also include copies and/or references to any relevant documents with information on ICs or that are discussed in the LUCIP. This can include, for example, planned or executed consent decrees with IC components, environmental covenants, decision documents, periodic reviews, monitoring reports, deed notices, or Notice of Activity and Use Limitations. This section will also provide a list of references used in development of each site-specific LUCIP.

3.8 Figures

To the extent applicable for each site, the figures in each site-specific LUCIP will be prepared in accordance with Section C, 2.4 of EPA's 2012 ICIAP guidance and will depict the following information:

- The spatial extent of all areas of residual contamination as described in the decision documents.
- The impacted parcels(s) with the corresponding parcel or tax identification number.

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- The spatial extent of engineering controls (e.g., pump-and-treat system piping, landfill cap) that may require restrictions to ensure the integrity of the selected response.
- The planned and/or implemented IC(s) selected in the decision document(s) that are intended to address the residual risks posed by any contaminated media and/or protect the engineering controls.
- Any other relevant features such as environmentally sensitive areas (e.g., wetlands), underlying zoning, or existing infrastructure.

4 References

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Appendix A

Example Land Use Control Checklist

Land Use Control Checklist

I. Site Information			
Site Name/Location:	Name/Affiliation:		
Remedy Includes:			
Inspection Date:			
Participants:			
II. Documentation and Records			
Item	Yes	No	Comments
Any related notices filed with Devens Enterprise Commission?			
Any related Department of Public Works permits found?			
Any related zoning permits or variances found?			
Any related Conservation Commission findings, proposals, or notices of intent found?			
III. Physical On-Site Inspection			
Item	Yes	No	Comments
Any evidence of new penetrations or repaved cut marks present in the ESMA?			
Is there evidence of damage to the remedy?			
Any groundwater extraction wells present?			
Is there sufficient access to the site for monitoring?			
Any signs of increased exposure potential?			
IV. Interview			
Name of Interviewer:			
Name of Interviewee:			
Contact Information:			
Interview Notes:			
Site Update:			

Land Use Control Checklist

Item	Yes	No	Comments
Is interviewee familiar with the land use controls imposed upon the property & documentation of these controls?			
Are there any extraction wells at the property?			
Are there any proposed plans for property sale, future development, construction, or demolition activities at the property?			
Any excavations, planned or emergency, that may have extended to soils below two feet in depth in ESMA?			
Are there any issues with site access for monitoring?			
V. Response Actions			
Item	Yes	No	Comments
Were violations of the LUCs present ?			
Are there Response Actions necessary based on the violations?			
Are modifications/ terminations of LUC's necessary?			
Have Enforcement Actions been taken during this reporting period?			

Attachment 1

**Response Letter for Regulatory Comments on the
Draft Land Use Control Implementation Plan and
Regulatory Concurrence**



US Army Corps
of Engineers®

New England District
696 Virginia Road
Concord, Massachusetts
01742-2751

Project Name: Former Fort Devens Army Installation		Date:	19 December 2021	
Location: Devens, Massachusetts		Reviewer:	David Chaffin (DEP) and Carol Keating (EPA)	
Document Name: Land Use Control Implementation Work Plan			Comments received: October 3, 2021 and November 4, 2021	
Prepared By: USACE and SERES-Arcadis 8(a) JV				
No.	Ref. Page / Para.	COMMENTS	RESPONSE	Disposition
		David Chaffin (MA DEP)		
1.	Section 1	Consistent with the Army's decision to prepare a LUCIP for AOC 57 under this plan, MassDEP recommends that a final LUCIP for SA-71 be prepared under this plan. Though EPA deemed the SA-71 remedy protective after the 2020 Five-Year Review, a final LUCIP has not been submitted and approved, and annual LUC monitoring reports have not been submitted since the February 2017 draft final LUCIP was submitted. After a final SA-71 LUCIP is approved, MassDEP recommends that SA-71, like AOC 44/52, be added to the list of sites addressed in the Main Post Annual Reports.	A Final LUCIP will be prepared for SA-71 once contracted. The Army submitted the draft final LUCIP in February 2016 but the issues related to the soil management plan needed to be resolved as part of the LUCIP Addendum for the Housing Areas, which was finalized in April 2021.	
2.	Table 2	The proposed LUCIP template is acceptable; however, to facilitate review and implementation, MassDEP recommends that the template used to prepare existing LUCIPs for Grant HA/Impact Area, Oak and Maple HAs, and SA-71 be used. At a minimum, all the elements covered in these existing LUCIPs should be captured in the LUCIPs that will be prepared under this plan. In particular, the LUCIPs should specify LUC responsibilities, implementation actions, and approvals; include an implementation schedule; and include copies of site-specific NAULs as attachments.	MA DEP's comment will be taken into account during preparation of the stand-alone LUCIPs. The specific elements identified in MA DEP's comment are covered under the proposed LUCIP template as follows: <ul style="list-style-type: none"> Sections 4 and 5 (revised to Sections 3 and 4 in the Draft Final Version) will cover LUC responsibilities, implementation actions, and approvals, and will include an implementation schedule. Section 8.0 (revised to Section 7 in Draft Final Version): Appendices will include copies of site-specific NAULs. 	



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No.	Ref. Page / Para.	COMMENTS	RESPONSE	Disposition
		Carol Keating (EPA)		
1.	N/A	Although EPA's September 2020 Additional Work letter required preparation of a stand-alone LUCIP for AOC 43G, EPA has determined that this is no longer required, and the site can be omitted from the draft LUCIP work plan. Because the 1996 ROD did not include LUCs as a component of the selected remedy but rather based the remedy, in part, on Army's current use of the property, Army has no LUCs to implement at this time. Should Army change use of the property, additional assessment and/or remedial actions may be required based upon the changed risk factors resulting from the change. Also, as was the case for AOC 43J, if Army transfers the property either by lease or deed, then an Environmental Baseline Survey (EBS) will need to be conducted, and a determination will be made by the Army and USEPA that the selected remedy remains protective of human health and the environment. In the event Army issues an ESD or ROD Amendment that includes LUCs as part of the remedy, a draft AOC 43G LUCIP should be prepared/submitted at that time.	Comment noted; AOC 43G will be removed from the LUCIP Work Plan as an AOC requiring a stand-alone LUCIP at this time.	
2.	Page 2, Section 1.1, Project Overview	For reasons discussed in Comment 1 above, AOC 43G can be deleted from the list of AOCs for which stand-alone LUCIPs are required at this time.	AOC 43G will be deleted from the list of AOCs requiring a stand-alone LUCIP at this time.	
3.	Page 3, Subsection 1.1.2, AOC 43G	For reasons discussed in Comment 1 above, this section can be omitted from the draft LUCIP Work Plan.	Subsection 1.1.2 will be deleted from the LUCIP Work Plan.	



No.	Ref. Page / Para.	COMMENTS	RESPONSE	Disposition
4.	Page 3, Subsection 1.1.3, AOC 69W	For consistency with ROD and/or deed-specified restrictions, please amend the discussion to include the following: <ul style="list-style-type: none">• Property Use Restriction – property restricted solely to educational, institutional, and open space uses;• Groundwater restriction – access or use ground water underlying the Property for any purpose is prohibited without prior written approval of the Army, the EPA, and the DEP; and,• Soil Restriction – soil shall not be excavated from areas of the Property identified as the “Soil Management Area” (see Deed, Exhibit C, Map of Parcel A.15) for any purpose without the prior written approval of the Army, the EPA, and the DEP.	The discussion in Subsection 1.1.3, AOC 69W will be amended to include the Environmental Protection Provisions stipulated in the Quitclaim Deed, which include the three restrictions identified in EPA’s comment.	
5.	Page 4, Subsection 1.1.4, AOC 57	The first sentence states that AOC 57 is “owned by the Army but leased to MassDevelopment per a 1996 Lease in Furtherance of Conveyance (LIFOC) Agreement.” However, EPA believed that Army’s issuance of the Final Parcel A.6.A (AOC 57) Finding of Suitability to Transfer (FOST) in August 2015 was to facilitate transfer of AOC 57 (and surrounding 16.0-acre property in Parcel A.6.A) to the Massachusetts Development Finance Agency (MassDevelopment). Please explain why/when Army decided to retain ownership of the property and discuss future plans for the site, specifically as they relate to future transfer and development of the property for Rail Industrial and Trade-Related and Recreation/Open Space purposes (Page 1, Final FOST).	<p>The Army still owns the property as indicated in the 2020 Five-year Review Report. The intent is to complete the transfer of the parcel to MassDevelopment. A timeframe has not been established.</p> <p>As discussed with EPA in 2018, Army decided not to proceed with the FOST due to the presence of PFAS in monitoring wells on the property, which required further consideration.</p>	
6.	Page 7, Subsection 3.2 “Section 2.0: Purpose”	While the work plan states that site-specific LUCIPs will be prepared in accordance with EPA guidance, “ <i>Institutional Controls: A Guide to Preparing Institutional Control Implementation and Assurance Plans at Contaminated Sites</i> ,” EPA OSWER 9200.0-77 EPA-540-R-09-002, December 2012 (“EPA’s 2012 Guidance”), the guidance does not recommend inclusion of a “Purpose” section. Please explain. Also, please elaborate on how/why Army intends to “ <i>describe the general basis for utilizing LUC strategies</i> .”	The ‘Purpose’ section will be removed from the LUCIP Work Plan and stand-alone LUCIPs per the comment.	



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No.	Ref. Page / Para.	COMMENTS	RESPONSE	Disposition
7.	Page 10, Subsection 3.8 "Section 8.0: References"	For consistency with Section 7.0 of EPA's 2012 Guidance, this section should be retitled "Section 8.0: Appendices." Also, in addition to a list of references used in development of each site-specific LUCIP, this section should include copies of any relevant documents with information on ICs or that are discussed in the LUCIP (i.e., planned or executed consent decrees with IC components, environmental covenants, decision documents, periodic reviews, monitoring reports, or deed notices.)	The section will be retitled as requested. Please also see the response to EPA's Comment 8 for additional proposed changes to this section.	
8.	Page 11, Subsection 3.10 Attachments	As stated in Section 1.0, LUC inspections should be conducted annually. To ensure consistency, EPA requests that the first sentence be amended to, "The attachments in each LUCIP will include a site-specific LUC Checklist that will be used annually for IC assurance monitoring; see Appendix A for an example checklist."	Based on EPA's Comment 7, the information planned for Section 10: Attachments, will now be included in Section 8.0: Appendices. The referenced sentence will be moved to Section 8.0: Appendices and will be edited as requested.	
		END OF COMMENTS		



Heather Levesque <halevesque@seres-es.com>

RE: Responses to comments on the Draft Land Use Control Implementation Work Plan , Former Fort Devens, MA

Keating, Carol <Keating.Carol@epa.gov>

Mon, Dec 20, 2021 at 5:06 PM

To: "Reddy, Penelope W CIV USARMY CENAE (USA)" <PENELOPE.W.REDDY@usace.army.mil>, "Chaffin, David (DEP) (David.Chaffin@MassMail.State.MA.US)" <David.Chaffin@massmail.state.ma.us>, "Herzig, Roy" <RHerzig@massdevelopment.com>

Cc: "Lineer, Thomas A CIV USARMY HQDA DCS G-9 (USA)" <thomas.a.lineer.civ@army.mil>, "robert.j.simeone.civ@mail.mil" <robert.j.simeone.civ@mail.mil>, "Vitolins, Andy" <Andy.Vitolins@arcadis.com>, "halevesque@seres-es.com" <halevesque@seres-es.com>

EPA has reviewed the above-referenced document, and based on Army's agreement to make the requested changes, accepts the responses with no additional comment.

Thanks,

Carol A. Keating

U.S. EPA Region 1

5 Post Office Square

Suite 100 - OSRR7-03

Boston, MA 02109

617-918-1393

From: Reddy, Penelope W CIV USARMY CENAE (USA) <PENELOPE.W.REDDY@usace.army.mil>

Sent: Sunday, December 19, 2021 8:04 PM

To: Keating, Carol <Keating.Carol@epa.gov>; Chaffin, David (DEP) (David.Chaffin@MassMail.State.MA.US) <David.Chaffin@MassMail.State.MA.US>; Herzig, Roy <RHerzig@Massdevelopment.com>

Cc: Lineer, Thomas A CIV USARMY HQDA DCS G-9 (USA) <thomas.a.lineer.civ@army.mil>; robert.j.simeone.civ@mail.mil; Vitolins, Andy <Andy.Vitolins@arcadis.com>; halevesque@seres-es.com

Subject: Responses to comments on the Draft Land Use Control Implementation Work Plan , Former Fort Devens, MA

1/18/2022

Seres Engineering & Services, LLC Mail - RE: Responses to comments on the Draft Land Use Control Implementation Work Plan , Form...

Hello,

Please find attached the responses to comments on the *Draft Land Use Control Implementation Work Plan, Former Fort Devens Army Installation, Devens, Massachusetts*. The attached cover letter provides additional details for this submission.

Thank you.

Penelope Reddy

U.S. Army Corps of Engineers

[696 Virginia Road](#)

[Concord, MA](#)

978-318-8160



Heather Levesque <halevesque@seres-es.com>

RE: Responses to comments on the Draft Land Use Control Implementation Work Plan , Former Fort Devens, MA

Chaffin, David (DEP) <david.chaffin@state.ma.us>

Mon, Dec 20, 2021 at 8:39 AM

To: "Reddy, Penelope W CIV USARMY CENAE (USA)" <PENELOPE.W.REDDY@usace.army.mil>, "Keating, Carol" <Keating.Carol@epa.gov>, "Herzig, Roy" <RHerzig@massdevelopment.com>

Cc: "Lineer, Thomas A CIV USARMY HQDA DCS G-9 (USA)" <thomas.a.lineer.civ@army.mil>, "Simeone, Robert J CIV USARMY CENAE (USA)" <robert.j.simeone.civ@mail.mil>, "Vitolins, Andy" <Andy.Vitolins@arcadis.com>, "halevesque@seres-es.com" <halevesque@seres-es.com>

The responses to MassDEP comments are acceptable.

David Chaffin

Massachusetts Department of Environmental Protection

One [Winter Street](#), 3rd Floor

Boston, MA 02108

From: Reddy, Penelope W CIV USARMY CENAE (USA) <PENELOPE.W.REDDY@usace.army.mil>**Sent:** Sunday, December 19, 2021 8:04 PM**To:** 'Keating, Carol' <Keating.Carol@epa.gov>; Chaffin, David (DEP) <david.chaffin@mass.gov>; Herzig, Roy <RHerzig@Massdevelopment.com>**Cc:** Lineer, Thomas A CIV USARMY HQDA DCS G-9 (USA) <thomas.a.lineer.civ@army.mil>; 'Simeone, Robert J CIV USARMY CENAE (USA)' <robert.j.simeone.civ@mail.mil>; Vitolins, Andy <Andy.Vitolins@arcadis.com>; halevesque@seres-es.com**Subject:** Responses to comments on the Draft Land Use Control Implementation Work Plan , Former Fort Devens, MA

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Hello,

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Thank you.

Penelope Reddy

U.S. Army Corps of Engineers

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