Challenges in Obtaining Property Access: The FUSRAP Maywood Site Experience - 15550

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ABSTRACT

The Formerly Utilized Sites Remedial Action Program (FUSRAP) is the US government program started in 1974 to identify, investigate and clean up or control sites that became contaminated as a result of the nation's early atomic programs. Many of these sites are not owned by the federal government and therefore require owner permission to enter. The experience in pursuing such access at the FUSRAP Maywood Superfund Site (the Maywood Site or the Site) in Bergen County, New Jersey, is extensive. Since the US Army Corps of Engineers (the Corps) assumed responsibility for the Maywood Site from the US Department of Energy in 1997, over 200 separate property access agreements (known in FUSRAP as a Real Estate Right-of-Entry or ROE) have been executed between the Corps and approximately 75 different land owners and tenant occupants at the Maywood Site (agreement renewals with the same owners over time account for the difference). Maywood's experience during the Corps' tenure, reflected here in three case studies of representative property access efforts, offers some lessons and best practices that may apply to other remedial programs. While the Site Community Relations Manager (the author of this paper) managed the property access task, multi-disciplinary support from across the project was also critical to success in this endeavor.

INTRODUCTION

The FUSRAP Maywood Superfund Site is located in an urbanized part of Bergen County, New Jersey (NJ), approximately 13 kilometers west of New York City (Figure 1). The primary contaminant of concern at the Site is thorium, a naturally occurring radioactive rare earth element that was extracted from monazite sand at a chemical plant in Maywood from about 1916 to 1959. This process generated a sludge-like byproduct material that was pumped into holding ponds or otherwise disposed onsite. Some of this material migrated offsite through surface water sediment deposition. Other material was taken from the plant site for use as fill on nearby properties. The Site consists of 88 designated properties known as vicinity properties, including residential, commercial and some government-owned properties. **Figure 1** locates FUSRAP Maywood Site properties and the case study properties examined in this paper. While the scale of Figure 1 lends itself to highlighting whole property parcels, contamination is known or suspected to exist in discrete areas of the individual parcels highlighted.

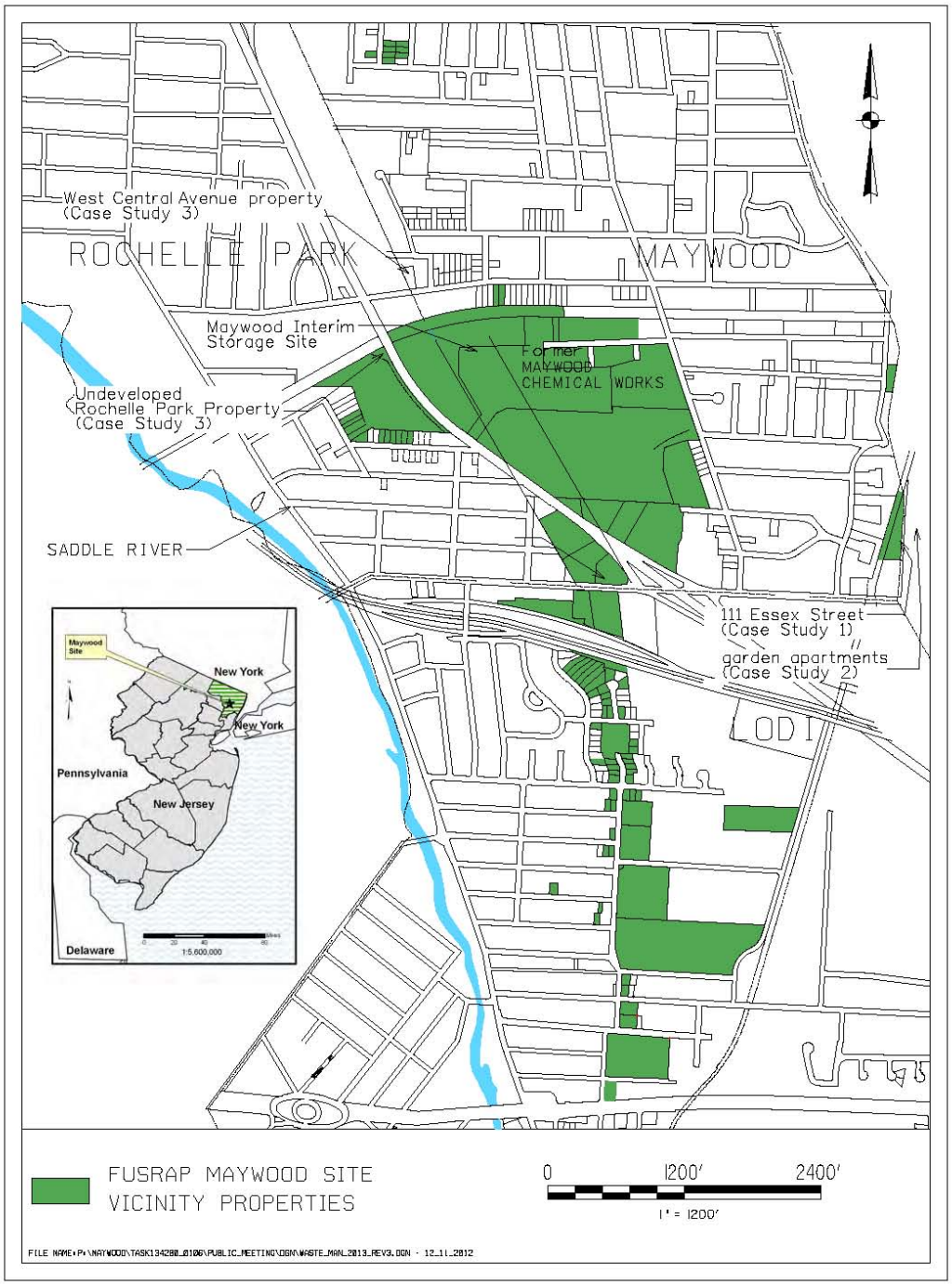

Fig. 1. FUSRAP Maywood Vicinity Properties and Case Study Properties

Site properties are located in three communities: the Boroughs of Maywood and Lodi and the Township of Rochelle Park. The combined population of these communities is 39,441, with a population density of approximately 3,285 persons per square kilometer. This compares to New Jersey's statewide density of 459 per square kilometer (ranking the state first in the US) and a national figure of 33.7 per square kilometer [1]**.** All 64 residential Site properties have been remediated in compliance with applicable regulatory cleanup standards. The Corps is currently addressing the remaining commercial and government properties, most of which house active businesses. As of this writing, FUSRAP remedial actions have been completed at 21 commercial properties and are underway at three others. FUSRAP activities at the Maywood Site are being conducted in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended [2].

DESCRIPTION OF THE CHALLENGE

As **Figure 2** and the following quotes illustrate, acquiring property access for environmental cleanup programs is a common challenge. All of these quotes are from recent media reports on contaminated sites in just one area -- northern New Jersey, USA. These examples are not intended to single out any particular site, agency or program. Rather, they are cited to represent similar challenges for environmental professionals everywhere.

“There are still residents who have not allowed EPA investigators to enter their homes”

“Dioxin tests begin in Upper Ringwood, few eligible homeowners in Superfund site onboard so far”

“EPA urges property testing”

“Just 19 of 40 or so homeowners permitted state regulators on their properties to test for lead and other contaminants”

“About a dozen properties of 430 or so homes in the affected neighborhood have signed up for NJDEP soil tests”

At the FUSRAP Maywood Site, the universe of property access needs reflects the complexity of the project. The properties themselves are a mix of residential homes, commercial properties housing both small and large enterprises, some undeveloped parcels, publicly owned land and public and private rights-of-way. Access for site characterization purposes was obtained during the study phase of the project, and more recently for implementing ongoing soil and groundwater remedies at the vicinity properties shown on Figure 2. Access to other (non-vicinity) properties has also been required, generally for establishing construction safety buffers, collecting environmental monitoring data, pursuing contamination across property lines (discussed further in Case Study 2) and occasionally for leasing purposes to support specific project needs. All of this has been executed in the context of a highly developed and densely populated setting, where space is at a premium and even a limited impact such as the loss of a few parking stalls can be a significant concern for land owners (as was the case for several Maywood Site commercial properties).

Also worth noting is another property access effort presently underway at the Maywood Site. Several properties that were investigated under FUSRAP in the 1980s and 1990s have now been identified for further investigation, to assess compliance with current soil cleanup criteria set forth in the 2003 *Record of Decision* for the Maywood Site [3]. These properties present new challenges to the project team. Ownership may have transferred several times over, such that current owners may be unaware that their properties were once subject to FUSRAP investigations. Other long-time owners may believe that FUSRAP activities on their land were long finished. This ongoing effort illustrates that property access is a consistent challenge in environmental remediation, even for mature projects such as Maywood.

Last week, Mayor Katie Cole and DuPont sent out 469 letters to homeowners in the so-called "plume" area of ...

As of Friday, DuPont reported, 216 residents had responded. ...

Residents must sign an official agreement granting government access before sampling can begin.

Testing was to begin earlier this month, but officials were waiting until at least 75 percent of homes responded to the surveys, Totman said. The EPA is still trying to contact 249 homes, she said.

"We're only at 64 percent, and we've made multiple attempts to get in touch with people by calling, going door to door, and in some cases, we make an appointment and the person doesn't show up," Totman said.

TOXIC LANDSCAPE: RINGWOOD

EPA urges property testing

Lead, dioxin threat lingers, officials say

The EPA distributed 650 surveys to residents and business owners, and 230 have been returned. EPA also has

Only 185 of the 430 or so homes in the affected neighborhood have the systems in place. The contamination comes from the former DuPont munitions factory.

So far, about a dozen properties have signed up for the DEP soil tests;

The EPA is studying samples from 90 more homes. Owners of 35 other homes that have had water seepage have not granted the EPA access to their basements.

Yet, said Judith A. Enck, regional administrator for the Environmental Protection Agency, the owners of only 191 out of the 439 homes eligible for the systems have had them installed. Hold-out residents have cited neighborhood reports of faulty installation by engineers hired by DuPont, distrust of the machines' effectiveness, and fear of inaccurate test results. They have been demanding the

All but one of the buildings was cleaned. The EPA has said it was denied access to one of the properties.

The homes are among 50 residences located within the 500-acre Superfund site where the Ford Motor Co. dumped paint sludge and other industrial waste more than 40 years ago.

The only homes targeted for dioxin testing are those built before 1980, when chemicals burned for weeks in dumping areas, releasing the highly toxic chemical to the community.

Six homeowners requested the testing, Rodriguez said.

Duch said homeowners in the affected area of the city have actually approached EPA workers who are installing the monitoring wells to talk to them about having their homes tested.

"A lot of people who have ignored all of the notices and articles are suddenly coming forward," he said. "But so far they have found no new instances of chromium in basements."

One goal of Wednesday's meetings was to encourage people whose properties have not yet been tested to contact the EPA, said Pat Seppi, the EPA's community involvement coordinator for the Superfund site.

Seppi said the EPA has surveyed all but about 100 of the properties in the area.

Dioxin tests begin in Upper Ringwood

Few eligible homeowners in Superfund site onboard so far

At least half of the 50 homes in the 500-acre Superfund site are eligible for testing, but only five homeowners have agreed to proceed, said Joseph Gowers, project manager for the federal Environmental Protection Agency, which will conduct the testing.

So far, only 191 out of the 439 eligible homes have installed vapor mitigation systems despite the urging of federal, state, and community officials.

"The numbers are too low," Martin said. "I want to know why we haven't been able to install more of them."

Fig. 2. Newspaper excerpts regarding property access for environmental studies in northern New Jersey, USA.

DISCUSSIONS

Initial Property Access Acquisition

Not long after the FUSRAP transfer in 1997, the Corps initiated contacts with representatives of impacted commercial vicinity properties through a series of introductory meetings (note: by this time, access to all but one residential Site property cleanup had been obtained previously). The ultimate goal of the meetings was to execute property access agreements between the land owners and the Corps, the latter signing on behalf of the US government. A standard form used by the Corps Real Estate Division, known as a Real Estate Right-of-Entry or ROE, served as the starting point for the conversations. In a few instances, owners accepted and signed off on the standard ROE form with little or no modification. More often though, negotiations were more complicated and took longer to conclude. A review of Maywood project records from this period reveals an average of about 50 days from first contact to access agreement execution. The most challenging aspects of these extended negotiations typically involved conditions being proposed by property owners, including: duration of the agreement; requests for compensation; special insurance requirements; coordination with property business operations; protection of utilities and other critical infrastructure; and property-specific safety provisions, to name a few. In addition, legal reviews by both parties to the agreements often lengthened the process. In one noteworthy case, negotiations with one property owner and their counsel lasted nearly two months and resulted in a final access agreement that ran nine pages, far longer than the standard two-page template offered at the start.

Through the leadership of Corps project management and important contributions from the Corps' Real Estate Division and Office of Counsel and contractor staff from Shaw Environmental, Inc., access agreements were successfully executed in this early round for all but one property. The lone exception turned out to be a property that was being actively marketed, and an agreement was executed with the new owner once the property transaction was completed. This early experience yielded a valuable lesson that would serve the FUSRAP Maywood Site team going forward: ample time for property access pursuit must be factored into overall project planning and scheduling.

Three Case Studies

This section presents three representative property access challenges faced by the FUSRAP Maywood project, describes how they were met to keep the project moving forward, and offers some lessons from each case. All the properties discussed are located on Figure 1.

Case 1 – Site Vicinity Property at 111 Essex Street, Maywood, NJ

Property Description – Unimproved land owned by a local contractor and used as a storage yard for construction equipment and material.

Property Access History – Following the Corps' initial round of contacts described above, the property owner and the Government executed an ROE in March 1999. The agreement had a 36-month term that allowed sufficient time for primary FUSRAP site characterization activities such

as soil and groundwater sampling and civil surveys to be completed. Upon expiration of that first ROE in March 2002, repeated attempts at renewal were made by the project, including transmitting draft agreements, remedial design drawings, schedules and other documents to the owner. The owner offered various reasons for delaying the renewal, including an insistence on a firm remediation start date. In the end a new agreement was not executed until June 2007. However, the owner continued to permit FUSRAP access to his property during this interim period as needed, subject to advance scheduling on a case-by-case basis.

While workable, this arrangement was not ideal. Without a formal agreement with the terms and conditions required by each party, neither would commit to moving forward with remedial action on the property. However, the arrangement did allow for some additional characterization work. Wetland delineation to support a stream encroachment application to the New Jersey Department of Environmental Protection (NJDEP) was performed, as was coordination with Bergen County engineering staff on planned drainage improvements for the site (Coles Brook on the site's eastern border is historically prone to flooding during heavy rain events). While the delay impacted the remedial construction schedule in place during this time, the project took advantage of the schedule's built-in flexibility and adjusted by advancing other properties in the remediation "queue."

The access agreement, eventually executed in 2007, allowed remedial planning to proceed in earnest. Several important issues were addressed under this agreement, including: development of a mutually acceptable property restoration plan (including restoration of wetland areas, a particular sticking point); procurement of leased space to temporarily store the owner's equipment and materials; procurement of temporary utilities for remedial construction; and remedial construction traffic planning (the property was only accessible by way of an easement through an adjacent property, a busy car wash; coordination with that owner was also undertaken to minimize impacts to his business). Remedial construction began in May 2010 with site mobilization and was completed in November 2011 with final restoration. During this period, the ROE was once again renewed in July 2010, this time with fewer complications as most matters at issue had been resolved during the earlier planning phase.

Project Resources Brought to Bear:

- Army Corps FUSRAP Maywood Project Management – overall direction of all negotiations with the property owner
- Real Estate Division – drafted ROEs; performed market appraisal for leased temporary storage space, executed lease
- Office of Counsel – reviewed all modifications to standard ROE proposed by property owner and interacted with owner's attorney on property restoration issues
- Shaw Environmental (Contractor) – Community Relations (CR) Manager coordinated and tracked all communications with the property owner. Project Engineer, Construction Superintendent and Project Scheduler prepared drawings and schedules requested by the property owner.

Lessons:

- Develop contingencies. If property access is delayed or cannot be obtained, have a plan in place to ensure that other project objectives can be advanced in the interim.

- Pursuing property access rights can be frustrating. Patience is key. Address owner questions and concerns respectfully, even if they seem unreasonable, to establish trust and credibility and increase chances for success.
- Be creative. The owner had pointed concerns about wetland restoration on the property. Taking the time to listen and understand allowed to project to develop a creative solution acceptable to the owner, the Corps and the regulators.

Case 2 – Garden Apartments, Hackensack, NJ

Property Description – A garden apartment community consisting of approximately 150 units, adjacent to the FUSRPAP Maywood vicinity property at 111 Essex Street (**Figure 3**). The two properties are separated by a small stream known as Coles Brook.

Property Access History – In planning for remediation of the 111 Essex Street property and a contiguous railroad right-of-way (also a designated Maywood Site vicinity property), the potential for soil contamination extending onto bordering properties not part of the Site was identified. Research of property records in two different municipalities (111 Essex Street is located on Maywood's border with the neighboring City of Hackensack) revealed that the two Site properties were bounded by nine separate parcels, each with different owners of record. Corps project management determined that pursuing ROEs for these parcels PRIOR to remedial construction on the designated properties would be prudent, so that access rights to chase contamination across property lines would be in place if needed.

Of the nine bordering properties, the experience with the apartment community makes the best case for early consideration of property access needs in site remediation. Publicly available property tax records showed that the apartments were owned by a regional real estate investment trust that owns, operates, and develops apartment communities across the eastern US. Initial contacts there by the project CR Manager were referred to a senior environmental attorney with the owner's outside law firm. The CR Manager provided her with some background on the FUSRAP Maywood Site, noted the pending remedial action at a neighboring property, and explained the need for property access on a contingency basis in the event contamination was found to extend onto her client's property. In response, the attorney requested additional information, including a design drawing showing estimated contamination limits and an

Fig. 3. Garden apartments community viewed from the 111 Essex Street vicinity property. The white stakes approximate the property line. Coles Brook is not shown as it was diverted to a pipe at the time of this photo.

anticipated schedule. A draft ROE document was also transmitted by the Maywood project at this time, in expectation that a working document in hand would help accelerate the process. After several weeks of internal consultation which included the apartment owner's environmental consultant, the attorney agreed in principle to a limited access agreement for a defined soil sampling scope at the 111 Essex Street – apartment property line. If the sampling results confirmed the presence of FUSRAP contamination, the apartment owners would entertain an amended ROE for remediation, with details to be addressed at that time.

Another round of negotiations over the ROE language followed. Most revisions were proposed by the owner, including provisions on limiting interference with property operations (mainly use of the property by apartment tenants and guests), protocols for communications with tenants on the work scope and schedule, hours of FUSRAP activities, utility protection, data transmittal including closeout reporting, and liability and insurance requirements. It should be noted that the owner initially asked for indemnification against any losses resulting from FUSRAP activities, something the Government is not permitted by law to do. This point of contention might have been avoided by communicating a clear list of "deal breakers" to the property owner at the

outset. Ultimately, a final agreement, totaling seven pages (up from the standard two) with seven sections, 27 subsections and two exhibits, was executed in February 2011, nearly six months after initial contacts on the matter.

The soil sampling was performed on March 1-2, 2011, and validated data confirming contamination on the apartment property were transmitted to the attorney and property management as soon as they became available. For the FUSRAP Maywood team, time was fast becoming a consideration as remedial excavations were progressing towards the property line, the only portion of the 111 Essex Street site left to be addressed. If an access agreement for remediation purposes could not be executed quickly, field work would come to a virtual standstill, with serious cost and schedule consequences. Project scheduling, always a challenging enterprise given the complexity of the Maywood Site, would have to be revisited. And the Corps' public reputation might suffer from what could be reasonably perceived as an avoidable work stoppage. However, there was one important factor working in the project's favor: the sampling-only agreement that was already executed. The painstaking effort in crafting the existing agreement had produced a document that addressed all the terms and conditions required by the owner and the Government and complied as to form with both parties' needs. Given this advantageous starting point, the parties concurred that a simple amendment to the existing agreement, tailored for remedial action, would be sufficient. The amendment, a single page incorporating the original ROE by reference with a new drawing and scope of work, was prepared and executed in time for remedial excavations to proceed without interruption.

Project Resources Brought to Bear:

- Corps FUSRAP Maywood Project Management – overall direction of all negotiations with the property owner
- Real Estate Division – drafted ROEs and reviewed revisions.
- Office of Counsel – reviewed numerous modifications to standard ROE proposed by property owner; direct communication with owner's attorney on indemnification, liability and insurance issues
- Shaw Environmental (Contractor) – CR Manager coordinated and tracked all communications with the property owner. Project Engineer, Construction Superintendent and Project Scheduler prepared drawings and schedules as requested by the property owner. Corporate Risk Manager obtained insurance coverage certifications at request of property owner.

Lessons:

- Communicate items that are not acceptable by law or policy to property owners at the outset. These include: indemnification against potential losses (under the federal Anti-Deficiency Act, the Government cannot commit funds yet to be appropriated); insurance requirements (the Government is self-insured; it cannot name owners as "additional insured" or ask contractors to provide more coverage than is required by the Federal Acquisition Regulation [4]; Privacy Act considerations (in most circumstances, the Government cannot disclose information to third parties) [5], choice of law (agreements must be governed by federal law) and owner compensation (not authorized for property remediation under FUSRAP). This can save time by focusing on issues that are in fact negotiable.

- Use conservative estimates for scheduling property access acquisition. In Case Study 2, negotiations to reach even a limited (sampling-only) access agreement took almost six months to complete, and the amendment allowing for remedial action was concluded just days before field activities would have been impacted.

Case 3 - Environmental Monitoring Locations: West Central Avenue property, Maywood, NJ, and an undeveloped property in Rochelle Park, NJ

West Central Avenue Property Description – an auto salvage storage yard with a commercial building located north of the Maywood Interim Storage Site (MISS) vicinity property.

Undeveloped Rochelle Park Property Description – vacant land located west of the MISS; landlocked by railroad tracks, a major highway (New Jersey Route 17) and a commercial property; accessible via the railroad right-of-way only.

Property Access History - In early 2011, planning began for comparatively deep remedial excavations (estimated to 20 feet below ground surface) on the government-owned MISS vicinity property, a historic disposal location for the contaminated material being addressed under FUSRAP. The area to be excavated was proximate to a known chlorinated solvent plume originating from an offsite source that was being addressed by the NJDEP Bureau of Site Assessment. This raised concern among technical staff that groundwater dewatering drawdown in support of the deep excavations could influence (draw in) the chlorinated solvent plume. Consequently, a comprehensive groundwater monitoring plan was developed to track potential movement of the plume during the remedial construction. The plan called for groundwater sample collection and level measurements at existing Site monitoring wells and installation of several new wells for the same purposes. Because of their locations in relation to the planned excavation area and the solvent plume, the two properties described above were identified as desirable sites for new monitoring wells.

Communications with the respective property owners on proposed well installations began in May 2011. The West Central Avenue property owner was initially receptive to the proposal but wished to consult with his attorney. Shortly thereafter, he requested more details on the proposal, including: the purpose of the proposed wells; a description of the associated FUSRAP Maywood work; proximity of the chlorinated solvent plume to his property; the potential for the plume to migrate onto his property as the result of FUSRAP activities and any corrective actions in that event; and any FUSRAP data collected at or near his property to date. The requested information was provided by the CR Manager with the timely assistance of technical staff. Further negotiations followed regarding a compensation request by the owner above the standard annual payment made to property owners who agree to host FUSRAP monitoring wells. This issue too was resolved and an ROE was executed in July 2011. The monitoring program was implemented in September 2011 and successfully concluded in August 2012.

Discussions with the owners of the Rochelle Park property proved more complicated and were ultimately (though not unexpectedly) unsuccessful. The property in question is a designated Maywood Site vicinity property; the project had difficulties in obtaining access for remedial action in 2000, and the Corps ultimately sought relief through the courts. This prior experience

was identified by the CR Manager early in the groundwater monitoring program planning, and the chances for acquiring access to this property were evaluated accordingly. Given this history, the West Central property was concurrently identified for well installation in part as a "back up" location in the event access to the undeveloped parcel was not forthcoming. This points to another valuable lesson: identify alternate locations for site actions if possible, in the event that preferred locations prove unavailable. Clearly, this does not apply to most remedial actions: contamination resides in fixed locations and there is no alternative to addressing it in-place. But it may apply to activities such as environmental monitoring, where preferred data collection points may not always be accessible but suitable alternate locations may be. In the end, the property owners in question (a partnership, one of whom happened to be an attorney who served as the point of contact on this matter) did not grant access. Their stated reasons included objections to the length of the access request (up to 60 weeks), a request for compensation that the Government declined, and concerns that an access agreement might complicate future plans to lease the property.

Project Resources Brought to Bear:

- Corps FUSRAP Maywood Project Management – overall direction of all negotiations with the property owner, including response to owner's compensation request
- Real Estate Division – drafted ROEs
- Office of Counsel – reviewed numerous modifications to standard ROE proposed by property owner; direct communication with owner on compensation issues
- Shaw Environmental (Contractor) – CR Manager coordinated and tracked all communications with the property owner. CR Manager and Project Groundwater Staff consulted to identify suitable monitoring locations with consideration of potential property access constraints.

Lessons:

- Develop contingencies. If access to a given property seems unlikely based on current or potential future use, past experience with owners, or other indicators, identify other technically suitable locations and pursue them simultaneously.
- Integrate technical and community relations planning. Each discipline may know something the other needs to be aware of in developing their respective strategies.

ONGOING PROPERTY ACCESS CHALLENGES

Another major property access effort for the Maywood Site got underway in 2013 and continues today. Based on recommendations in EPA's first *Five-Year Review Report* [6] for the Site, the project team conducted a detailed review of thousands of project records on over 300 properties that were subject to FUSRAP investigation or cleanup activities in the past. The review took into account the differences in soil cleanup standards used in the 1980s and 90s and those adopted in 2003 under the approved plan to address soil contamination at the Maywood Site, known as the *Record of Decision*. The 2003 ROD standards are slightly more restrictive for deeper soils. Twenty properties were identified through this process for further study to fill in historical data gaps and assess remedy effectiveness. These properties presented their own unique access challenges. Ownership may have transferred several times over, such that current owners were unaware that their properties were once subject to FUSRAP investigations and in some cases had

letters from the government indicating the property had met cleanup goals. Other long-time owners believed that FUSRAP activities on their land were successfully completed years ago.

After distributing some background public information materials on the need for access to the affected property owners, the project team implemented tailored communications plans to address the specific needs of each owner. Using this approach over a period of several months, access agreements were successfully executed with all but one of the 20 property owners. Some particular challenges encountered and overcome were as follows:

Language barriers – Initial communications to one owner through mailed materials prepared in English brought no response. The project Community Relations Manager then visited the property to find that the residents of the home were native Spanish speakers with limited English language skills. Support from a Spanish-speaking Army Corps Real Estate Specialist was enlisted. The information materials and their covering correspondence were translated and resent. Follow-up phone calls to confirm receipt of the materials and address questions regarding the access request were made. Within weeks, an access agreement for the property was successfully executed.

Legal review – At several commercial properties, attorneys served as the primary owner point of contact for property access matters. In these cases, attorney review of standard access agreements used by the project often generated requests for language modifications or new conditions altogether. Examples included property-specific advance notice or insurance coverage requests. In one case, conditions addressing coordination of FUSRAP activities with ongoing groundwater treatment and monitoring were added. Several conference calls with the owner's attorney and environmental consultants were conducted before acceptable language could be crafted. In another, requests for compensation for access had to be addressed and resolved. Invariably, access agreement negotiations involving attorney review proved more complex and required more support from project technical, real estate and legal staff to conclude.

Sensitivity to personal issues - Repeated mail and telephone requests to one residential property owner regarding access elicited no reply. Finally, the project Community Relations Specialist reached the property owner by phone on a Saturday, outside of normal business hours. At that time, the owner advised that one of her children was having serious health problems and the FUSRAP property access request was not a priority. The Community Relations Manager consulted with the FUSRAP Maywood Site Project Manager about the conversation. It was agreed that a personal letter expressing his sympathies and apologizing for bothering the property owner at such a sensitive time was in order. The letter went on to say that the project would await contact by the property owner and make no further attempts of its own. Several weeks passed before the owner did in fact contact the project. She advised that her child had sufficiently improved enough for her to entertain the access request. After some follow-up communications on the technical details of the proposed action (in this case, soil sampling), the owner agreed to grant access to her property.

Working with public properties – Four of the properties identified for further evaluation were government-owned: two local parks and two parcels within state highway rights-of-way. This required dealing with the local government of each community and the New Jersey Department

of Transportation (NJDOT). Each entity had its own process for granting property access. In one municipality, it was granted by a simple signoff of the standard agreement by an authorized local official. In the other, an authorizing resolution by the local governing body and signoff by the mayor was needed. In the case of NJDOT, a meeting at their headquarters was held to discuss the access request and proposed sampling. NJDOT legal, engineering, environmental, and property management staff participated. Once all issues identified at the meeting were resolved, the access agreement went through legal review and numerous revisions by the state Office of the Attorney General and the Army Corps Office of Counsel. In the end, the NJDOT property access agreement required approval by four signatories representing the State of New Jersey.

Provision/interpretation of prior FUSRAP documentation – As noted, all of the properties identified for additional investigation had been subject to previous study or remediation under FUSRAP. Some property owners remained the same. At others, ownership had transferred one or more times. In either case, many property owners requested documentation of the earlier work. In response, the Community Relations Specialist researched project records, some dating as far back as thirty years, and furnished the documents. Any property owner questions were directed to technical staff including engineering and health physics as appropriate. Some responses were relatively straightforward, such as reviewing sampling results and remedial excavation limits. Others, such as interpretation of historic indoor air monitoring data relative to current standards, required closer consultation among staff to develop responses that would be meaningful to property owners.

CONCLUSIONS

Given the experiences described in this paper, the Maywood Site has made property access a key consideration in project planning. Access needs (both known for designated Site vicinity properties and potential in the event contamination encountered in the field is found to extend across property lines) are identified early. The CR Manager can then establish property ownership through local tax records, make initial contact with owner representatives, and develop a working understanding of issues or owner concerns that may need to be addressed. Real estate instruments can then be drafted accordingly and the often painstaking process of negotiating a mutually-acceptable final product can begin. The Maywood team has also come to recognize that these efforts are not limited to real estate, community relations or legal staff. Often, technical staff is enlisted to develop engineering plans, construction schedules, and other materials to support communications with property owners.

This team-based approach has resulted in a highly successful record on property access at Maywood. Only a handful of access pursuits have been unsuccessful, one of which was presented here in Case Study 3. The vast majority of access pursuits, though difficult and at times frustrating, have been successfully concluded as evidenced by the figures cited earlier.

The FUSRAP Maywood team has learned many lessons on property access since the Corps assumed responsibility for the project in 1997. Some of them are detailed in the case studies presented earlier and are simply restated below. Others, gained from experiences other than those discussed here, are also listed. Taken together, it is hoped that they offer insight to other

environmental programs on best practices and potential pitfalls in pursuing property access agreements.

- Identify your universe of property access needs early on and document all owner interactions.
- Prioritize needs based on project schedules, technical requirements, expectation for success, or other parameters as appropriate.
- Property access is a team effort. Project management, legal, real estate and technical expertise are all needed to support property owner interactions and reach a successful conclusion.
- Pursue aggressively but sensitively. Most owner concerns are legitimate even if they seem puzzling to you.
- Advise property owners of "deal breakers" up front, to focus discussions on issues that are in fact negotiable.
- Maintain flexibility within applicable statutory, regulatory or policy frameworks in seeking solutions to property access challenges.
- Research project records for previous dealings with a given property owner, to estimate time requirements and assess chances for success.
- Have a backup schedule if access to a given property is delayed or unavailable. Identify other project objectives that can be advanced in the interim.
- Identify technically suitable alternate locations, if preferred locations are unavailable.
- And last but not least, the 3 Ps - PATIENCE AND PERSISTENCE PAYS

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