

WHY WE SHOULD CARE ABOUT INSTITUTIONAL ANALYSES

And why do so many miss the mark?

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Munitions Response Meeting
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EP 1110-1-24
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ENGINEERING AND DESIGN

**ESTABLISHING AND MAINTAINING
INSTITUTIONAL CONTROLS FOR
ORDNANCE AND EXPLOSIVES (OE)
PROJECTS**

Scheduled to be updated in FY23!

ENGINEER PAMPHLET

"Approved for public release; distribution is unlimited."



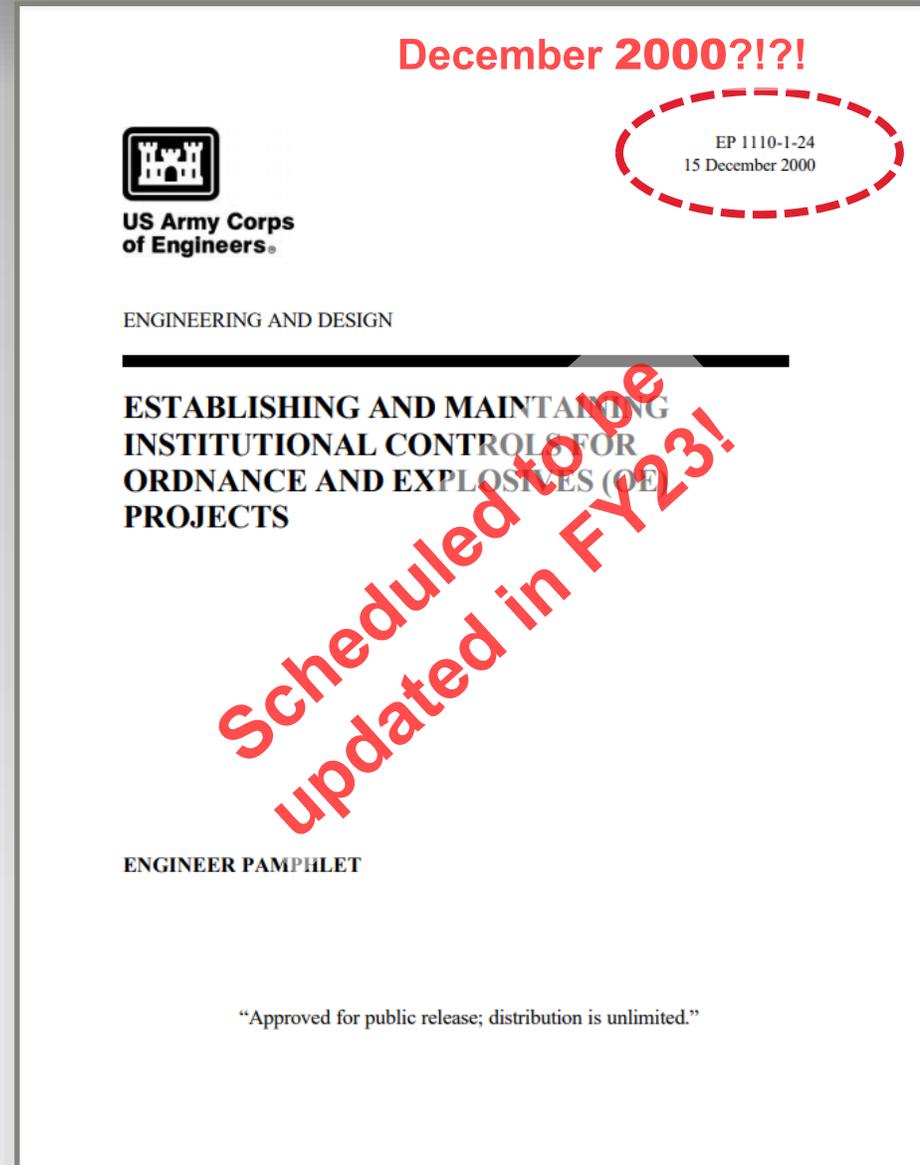
#3



WHAT IS AN INSTITUTIONAL ANALYSIS?



- ❖ Opportunity to collect data supporting a land use controls (LUCs) program
- ❖ Objectives
 - Identify government agencies with jurisdiction over the MRS and other stakeholders (e.g., landowners)
 - Assess their suitability, capability, and willingness to support LUCs
 - Note
 - Some landowners agree to record restrictive covenants
 - Some may have already done so
 - Identify feasible LUCs for the MRS
- ❖ Process is described in EP 1110-1-24
 - Being updated to EP 200-1-20 in FY23
 - *Establishing & Maintaining LUCs for Environmental Response Actions* [working title only]





COMMON ISSUES WITH INSTITUTIONAL ANALYSES



❖ Most institutional analyses

- **DO** identify organizations and stakeholders with jurisdiction over MRS ✓
- **DEFER** or **only PARTIALLY** assess their appropriateness, capability, and willingness to assist with implementing LUCs ?
- (Assistance may include funding & O&M) ✗
- **DON'T** evaluate which LUCs are supported by organizations and other stakeholders

❖ Institutional analysis is often an afterthought

- Leads to it being rushed, inconclusive, and inadequate





COMMON ISSUES, EXAMPLE #1



❖ Looking good... we're outlining role, responsibility, and authority clearly

❖ But then...

– We defer action to the Proposed Plan!

| Agency / Institution | Role | Responsibility | Authority |
|----------------------|------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| USACE | Lead Agency. Represents federal government in execution, oversight, and procurement of munitions response actions at MRS 01. | Initiate the Decision Document. Inspect condition of signage. Report new discoveries of MEC. Disseminate information and educational pamphlets. | Under the authority of DERP as established by SARA, actions to include, but not be limited to: <ul style="list-style-type: none"> • Fund MEC response actions. • Perform MEC investigations and munitions response actions. |
| DTSC | Represents state conducting regulatory review of munitions response actions at MRS 01. | Document review and participation in public meetings. | Under the authority of the Defense and State Memorandum of Agreement as established by SARA, provide input during the Proposed Plan and Decision Document process. |
| CDFW | Represents issues related to site use and the impacts of LUCs on these uses. | Allow installation of signage alerting recreational users and others of the MEC hazards at the site. Participate in education and public awareness programs to inform employees/site visitors of the MEC hazards at the site. | At their discretion, work with USACE to institute and enforce controls on site visitors. In accordance with California Penal Code Section (§) 602, enforce trespass restrictions. |
| Private landowners | Represent issues related to site use and the impacts of LUCs on these uses. | Allow installation of signage alerting recreational users and others of the MEC hazards at the site. | At their discretion, work with USACE to institute and enforce controls on site visitors. |

5.0 CONCLUSIONS

Final conclusions for this analysis will depend upon on acceptance of the RI and FS reports and the remedial alternatives selected for MRS 01 during the development of the Proposed Plan. Different LUCs may be selected for different parcels of MRS 01 based on land use and accessibility. Current and future capabilities for stakeholder/landowner support of LUCs, and current and future responsibilities (in terms of authorities and resources) and capabilities for land use and public safety will continue to be refined for the MRS during development of the Proposed Plan. The existing stakeholders/landowners in the MRS 01 process will continue to be involved and will provide input into the development and implementation of selected remedial option for MRS 01.

How can we develop viable remedial alternatives using LUCs if we don't know whether those LUCs are acceptable until the Proposed Plan?



COMMON ISSUES, EXAMPLES #2 AND #3



❖ Making assumptions about support...

- Are these assumptions supported?
- There's no way to tell

❖ Deferring action again...

- But until when?
- We don't say

6 8. TECHNICAL CAPABILITY

7 8.01 Each of the stakeholders discussed above has been involved in part or in all the previous
 8 phases of this investigation. Also, the listed agencies may be able to provide help and expertise
 9 that would be useful in developing and/or comparatively evaluating removal alternatives for
 10 MRS 03 and MRS 12 that are designed to protect the public. The listed agencies have been
 11 involved in various projects, as well as the project associated with MRS 03 and MRS 12, that
 12 protect the public from hazards contained on a site by warning of the hazard or limiting the
 13 access or use of the site. These hazard reduction approaches have the potential to reduce
 14 exposure to MEC by educating the public and private landowners, limiting access to a public or
 15 private site, or limiting the frequency, extent, or intensity of intrusive activities that may occur on
 16 a site. The effectiveness of ICs in any given situation depends not only on the type of IC but also
 17 the support of local agencies and landowners. It is likely that any IC that would impact the local
 18 economy would not be supported. In addition, each regulatory agency has experience in
 19 effectively disseminating information to large portions of the public.

| Private Property Owners | |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Origin | Individual private property owners |
| Basis of Authority | Approximately 280 acres of the MRS are owned by private individuals or entities. Authority is based on ownership of the property. |
| Geographic Jurisdiction | Seven parcels are owned by private individuals or entities which are partially or fully within the boundaries of the Project 14 MRS. These parcels comprise the southwest section of the MRS, which lies outside the Former BNAD borders. The private individuals or entities have jurisdiction over their respectively owned properties. |
| Public Safety Function | Private property owners rely on the Clay County Sherriff's Department for security, public safety, and law enforcement. The private property owners do not employ private safety/security personnel. |
| Land Use Control | Property owners have authority to support awareness activities that would reduce the probability of residents, construction workers, and visitors from handling MEC encountered during residential or construction activities conducted on respective properties within the MRS. |
| Desire to Participate | To be determined. |



COMMON ISSUES, EXAMPLES #4



- ❖ In this case, we *did* send a questionnaire to the landowner
 - But they didn't respond
- ❖ So, then we assumed they *would* be willing to participate based on prior experience
- ❖ Maybe this is reasonable
 - But why not pick up the phone and confirm it?
 - *Probably because this table was drafted at the same time as the RI Report, so it was inconvenient*
 - **NOTE:** The **only** landowner to respond to the survey said that they **wouldn't participate...**

Table 3-1: ACME IA Feedback Summary

| | |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Origin of Institution | ACME purchased the parcel in 1969. |
| Basis of Authority | ACME is the landowner for 100 acres of the MEC Impacted Area. As the landowner, they have the authority to implement LUCs on the entirety of their property. |
| Sunset Provisions | None identified. |
| Geographic Jurisdiction | ACME has jurisdiction over 100 acres of the MEC Impacted Area. |
| Public Safety Function | ACME has the responsibility to protect its employees and those who work on the property. |
| LUC Function | An Interim LUCIP (USACE 2002) was developed in 2002 and is applicable to the ACME property. Interim LUCs identified in the LUCIP include monitoring zoning for changes; reviewing construction permits and providing construction support; imposing advisories/restrictions to prevent incompatible land use; and continuing educational programs. There are no known engineering or access controls (i.e., fencing or signage) associated with the land owned by ACME. |
| Financial Capability | Since ACME did not respond to the questionnaire, the financial capability of ACME to fund LUCs is unclear. |
| Desire to Participate | Since ACME did not respond to the questionnaire, their willingness to participate in LUCs is uncertain. Given the controls in place under the Interim LUCIP, it is assumed at this time that ACME will be willing to participate in a LUCs program. |
| Constraints to Institutional Effectiveness | ACME can only control the LUCs on their property. |



WHY WE SHOULD CARE ABOUT THIS



- ❖ **These common issues usually mean**
 - DON'T have the data we need BEFORE drafting the FS
 - LUCs recommendations are unreliable
- ❖ **WHY this is a problem**
 - When drafting an FS, it's essential to know details about potential LUCs
 - Which ones are feasible
 - Whether they will be accepted
 - Who will fund and maintain them
 - Local community and stakeholders have particular influence over LUCs
 - So, we must ensure selection of LUCs
 - Is supported by community
 - Reflects site-specific objectives



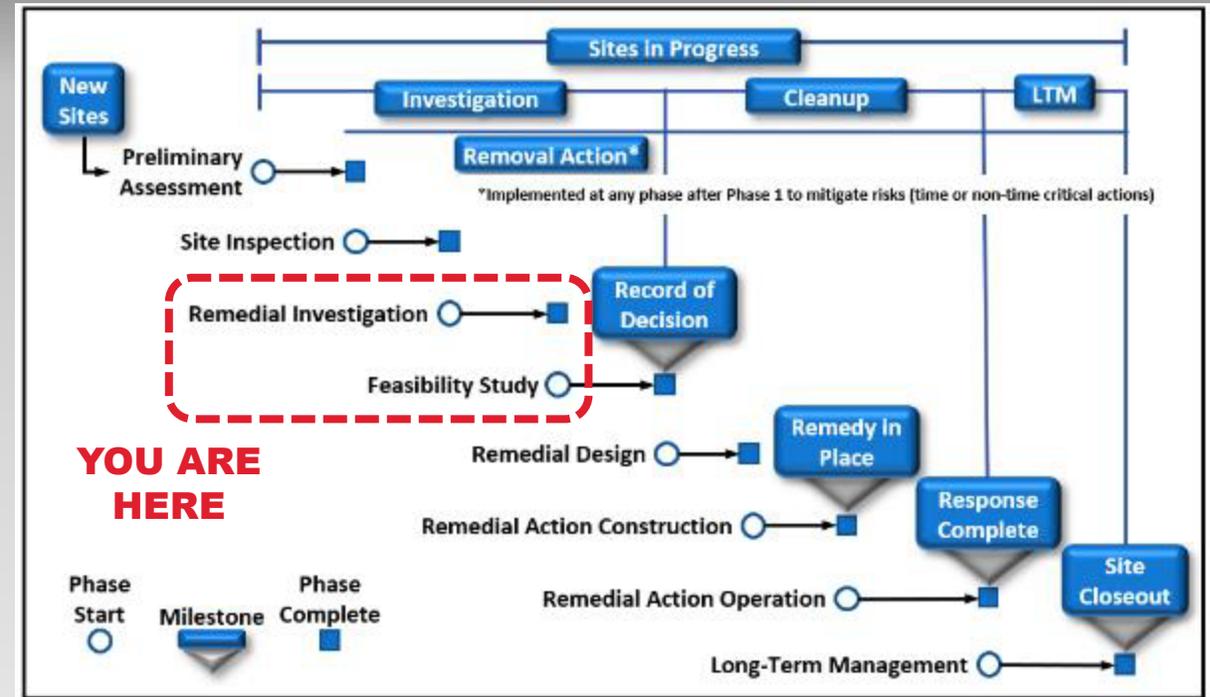


WHY WE SHOULD CARE ABOUT THIS, CONT'D.



❖ Because we **CAN'T** wait until later

- Done during the RI/FS
 - **MUST** be completed **BEFORE** alternatives are designed and evaluated
 - Which LUCs are feasible?
 - Which LUCs are implementable?
 - Which LUCs have stakeholder support?
 - Sooner is better
 - Start during initial SPP meetings



You need to understand which LUCs are options BEFORE you design alternatives in the FS, or you won't know which LUCs are feasible to use (that's just science!)



CONCLUSIONS



- ❖ **Start the Institutional Analysis early!**
 - **DO** use the SPP meetings to discuss LUCs with stakeholders
 - **DON'T** wait until the RI or FS reports are being written
- ❖ **Identify Definable Feature of Work in QAPP**
 - Describe methods for Institutional Analysis and Report
 - Including proposed contact list and interview form/record
 - This will make sure it gets done early
- ❖ **Communicate with regulators and applicable stakeholders**
 - Consult with them about LUCs
 - Assess capability and willingness to assist with LUCs
 - Discuss which LUCs are viable and supported
 - Be persistent!
 - Document the discussions
- ❖ **New EP 200-1-20 should help with this**



