



UNITED STATES MARINE CORPS
MARINE CORPS BASE
PSC BOX 20004
CAMP LEJEUNE NC 28542-0004

BO 5810.3H
SJA
AUG 23 2011

BASE ORDER 5810.3H w/Ch 1

From: Commanding Officer
To: Distribution List

Subj: AUTHORITY TO DIRECT AND CONDUCT CERTAIN TYPES OF SEARCHES
AND SEIZURES ABOARD MARINE CORPS BASE, CAMP LEJEUNE

Ref: (a) MCM, 2008, M.R.E. 311 & 314-316
(b) BO 11100.5R
(c) MCO 5580.2B
(d) JAGMAN 5800.7E

Encl: (1) OPNAV 5527/16 Permissive Authorization For Search And
Seizure
(2) Record of Authorization for Searches
(3) Area Commanders Assignments

1. Situation. To provide general guidance regarding the authority to direct certain types of searches and seizures by personnel assigned to organizations aboard Marine Corps Base (MCB), Camp Lejeune, North Carolina.

2. Cancellation. BO 5810.3G.

3. Mission.

a. Summary of Revision. This Order has been completely revised and should be reviewed in its entirety.

b. Scope. This Order applies to all areas and all property within the confines of MCB Camp Lejeune, including areas and property under the control of tenant commands. Additionally, this Order applies to all persons located within the confines of MCB Camp Lejeune, regardless of the command to which they are assigned. However, the commanding officers of tenant

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organizations and Area Commanders retain their authority to order searches and seizures when they do so in compliance with this Order. The Area Commander Assignments are provided as enclosure (3).

c. Whenever doubt exists as to the proper course of action, all commanders and law enforcement personnel shall seek legal guidance from their organizational Staff Judge Advocate (SJA) before conducting searches.

d. In the absence of guidance in this Order, reference (a) shall control searches and seizures aboard MCB Camp Lejeune.

4. Execution. All searches and seizures conducted pursuant to this Order must comply with the following instructions. Nothing in this paragraph shall be construed to confer rights greater than those accorded under current state and federal law.

a. Search of Family Housing and Common Areas. An officer designated as an area commander by reference (b) can authorize the search of personal property or persons situated or found in "common areas" (parking lots, parade grounds, recreation areas, exchange facilities, or other similar areas) within his/her area of responsibility. This authority is concurrent with that of subordinate or tenant organization commanders over the same areas. This authority may be delegated down to subordinate commanders who are special court-martial convening authorities. The search of civilians and civilian property, regardless of where located, is governed by the provisions of subparagraph 4d below. Except in the case of a federal search warrant, only the Commanding Officer, MCB Camp Lejeune can authorize a search of family housing and other "common areas" outside the purview of an area commander. Should Criminal Investigation Division (CID), Naval Criminal Investigative Services (NCIS), or a commanding officer desire authorization to search a "common area," to include any family housing areas, aboard MCB Camp Lejeune that does not fall within an area commander's area of control, authorization must be given by the Commanding Officer, MCB Camp Lejeune. During working hours, requests for authorization shall be made through the SJA, MCB Camp Lejeune; after hours, requests shall be made through the Command Duty Officer (CDO) located in Building 1. In either event, the SJA will make the administrative determination whether the particular situation requires action by the Commanding Officer or whether some other commander should be contacted. If the Commanding Officer, MCB Camp Lejeune is to

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hear the request for a search authorization, the person requesting the authorization must ultimately speak directly to the Commanding Officer, who will make the final determination as to the authorization of a search. If a law enforcement officer (LEO) is in receipt of a search warrant from a federal magistrate or judge to search an area under the exclusive control of the Commanding Officer, MCB Camp Lejeune, then the law enforcement official shall contact the SJA prior to execution of the warrant in order to provide notice to the Commanding Officer and coordinate execution.

b. Random Vehicle Inspections. The Commanding Officer, MCB Camp Lejeune may periodically direct the Provost Marshal to conduct random inspections of vehicles to locate and seize contraband or unlawfully possessed government property. Such inspections are permitted to determine and ensure the security, military fitness, and good order and discipline of the installation by preventing contraband from being brought aboard the installation as well as protecting government property from being improperly removed from the installation. The Commanding Officer, MCB Camp Lejeune may also direct that vehicles be randomly stopped to determine the qualification of the drivers to operate them or to ensure that the vehicles comply with applicable safety standards. Such stops and inspections may be directed to apply to vehicles entering or exiting the installation or at the entryway to any restricted area aboard the installation to include, but not limited to, housing, schools, the hospital, and range areas. The sequence of vehicles stopped and inspected must be truly random (e.g., every vehicle or every fifth or tenth vehicle) and must be adhered to without exception, regardless of the type of vehicle or the rank or identity of the driver or passengers. The order from the Commanding Officer, MCB Camp Lejeune to the Provost Marshal shall be in writing and must specify the time, date, and location of the inspections, the scope of such inspections, and the random vehicle selection criteria. The Provost Marshal will not determine the selection criteria. Only the Commanding Officer, MCB Camp Lejeune may direct random vehicle stops and inspections aboard the installation. However, the Provost Marshal may be delegated the authority in writing to temporarily lift the directed inspections for safety and operational purposes, e.g., conditions at the front gate create a traffic hazard on Highway 24.

c. Search of Vehicles. LEOs may stop a vehicle if they have a reasonable suspicion that a violation of the Uniform Code of Military Justice (UCMJ) or, in the case of civilians, a

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violation of applicable federal or state law, as incorporated through the Federal Assimilative Crimes Act, has occurred, is presently occurring, or is about to occur. A reasonable suspicion need not amount to probable cause, but must be more than a mere hunch, and the LEO must be able to articulate particular facts as to why stopping the vehicle was justified. Such reasons include, but are not limited to, a tip from a reliable informant, the LEO's past experience or the LEO's personal observations. Once stopped, a vehicle can be searched under the following circumstances:

(1) Plain View/Smell Search. When an LEO lawfully stops a vehicle, the LEO may look inside the vehicle through a window without a search authorization. If any contraband is seen or smelled in plain view/smell, the LEO can enter the vehicle and seize that contraband. Contraband is defined as any item which it is unlawful to produce or possess such as illegal drugs or other substances, weapons, or open alcohol containers.

(2) Consent Search. If an LEO lawfully stops a vehicle, the LEO may ask the driver for consent to search the vehicle. A person may grant consent to search the vehicle if they exercise control over that vehicle. To be valid, consent must be given voluntarily. The scope of the consent search may be limited in any way by the person granting consent. For example, the person granting consent may limit the time of the search as well as the places or property to be searched. Consent may be withdrawn at any point during the search. The LEO will comply with enclosure (1) in conducting the search.

(3) Weapons Sweep of a Vehicle. If an LEO has a reasonable suspicion (one which can be reasonably articulated and is not a mere hunch) that the people in the car the LEO is approaching may be armed or dangerous, the LEO can secure the situation and frisk the occupants for weapons. This suspicion can be based not only on the LEO's own observations, but on reliable hearsay as well, such as reports from informants or other LEOs. The LEO may also conduct a search for weapons in the passenger compartment of the vehicle where a weapon may reasonably be found. Any contraband or weapons seen in plain view or felt during this search can be seized in accordance with paragraph 4c(1).

(4) Probable Cause Search. If an LEO has probable cause, as defined in M.R.E. 315(f)(2) of reference (a), to believe that a moving vehicle is being used to engage in criminal activity and that evidence of such activity will be

found somewhere in the vehicle, then the LEO can search that vehicle without prior authorization. The entire vehicle, including the trunk, can be searched. Any containers which are found in the vehicle and are suspected to contain contraband can be seized and searched. This authorization does not apply when the LEO has focused their suspicion on a particular container that is later placed in a car. Thus, if the LEO watches a suspect put a suspicious container into a vehicle, the LEO cannot search either the vehicle or the container without a proper search authorization. The LEO can, however, conduct a weapons sweep of the passenger compartment of the vehicle pursuant to paragraph 4c(3). Any LEO conducting a search pursuant to this paragraph shall complete a sworn affidavit within 72 hours after the search setting forth the facts and circumstances that gave rise to probable cause to search the vehicle. This subparagraph does not apply to the use of GPS tracking devices; consult subparagraph (7) below.

(5) Search Incident to Arrest. If an LEO apprehends the driver or some other occupant of a vehicle for an offense, the LEO can search the person of the apprehended individual for the presence of a weapon or other item that may present a threat to the LEO. The LEO may also search the passenger compartment, including the glove compartment and any containers in the passenger compartment, but only if the suspect is within reaching distance of the passenger compartment at the time of the search, or the LEO can articulate specific facts that give rise to a reasonable belief that the vehicle contains evidence of the offense for which the individual was arrested. This type of search is permitted only when the person is actually apprehended for a criminal offense punishable by confinement (not a routine traffic citation). Such apprehension must be lawful.

(6) Inventory of Seized Vehicles. Pursuant to reference (c), vehicles, to include watercraft, may be impounded if determined to be abandoned or if considered evidence in that the vehicle was involved in the commission of a crime (to include stolen vehicles). Under such circumstances, the LEO shall conduct an inventory and document discrepancies and note results on DD Form 2506, Vehicle Impoundment Report. The LEO shall also complete a chain of custody and turn it into the Evidence Custodian per policies found in reference (c). An inventory of a seized vehicle should be conducted pursuant to written procedures established by the Provost Marshal or the CID Investigations Officer.

(7) Installation and monitoring of GPS-tracking device. Per the U.S. Supreme Court's decision in U.S. v. Jones, the

installation of a GPS-tracking device on a personally-owned vehicle constitutes a Fourth Amendment search when done to obtain information for a criminal investigation. An LEO wishing to use such a device must first obtain either a search warrant or a command authorization, depending on the location of the vehicle at the time of the proposed installation. The LEO must contact the SJA, MCB Camp Lejeune, to ensure that the appropriate authorization is obtained.

d. Searches of Civilians. Civilians suspected of violating Federal law can be detained by military law enforcement personnel for a reasonable period of time. When civilians are apprehended, military law enforcement personnel may take whatever steps are appropriate to provide for their own safety, including a search incident to arrest in accordance with paragraph 4c(5). Only the Commanding Officer, a United States Magistrate or a state judge acting in the place of a United States Magistrate can authorize any other search of the person or property of a civilian. Nothing in this subparagraph shall be construed to create any additional rights of defendants greater than those accorded under current federal law. In all cases in which a civilian is detained beyond the initial apprehension, the Judge Advocate serving as Special Assistant United States Attorney (SAUSA) should be contacted at (910) 451-2394/0283/0958 during regular working hours or through the recall roster located with the CDO, MCB after working hours.

e. Searches within Correctional Facilities. No probable cause is needed to search for weapons, contraband or other evidence of a crime within a correctional facility due to the special security requirements of such facilities.

f. Searches of Government Computers and Other Government Electronic Data. On a recurring basis, the Marine Air Ground Task Force Information Technology Service Center (MITSC) Information Assurance (IA) Branch receives requests for copies of electronic data. Although there is no explicit or implied right to privacy for users of Marine Corps Enterprise Network (MCEN) systems, the MITSC IA is required to exercise due diligence to protect against unauthorized or improper disclosure of Government and personal information. In order to facilitate the timely processing of requested electronic data, while preventing unauthorized or improper disclosure of government or personal information, the following process shall be followed:

(1) Electronic data may be released by the Director, S-6 or the Information Assurance Manager to:

(a) Commanders with Special or General Court Martial Convening Authority. Only the data that falls within the purview of the requesting commander shall be provided.

(b) Duly Appointed Investigating Officers. Investigating Officers must be assigned in accordance with reference (d). A copy of the investigating officer's appointment letter must accompany the request for electronic data. Only data that falls within the scope of the investigation shall be provided.

(c) NCIS and Provost Marshal's Office (PMO).

1. NCIS and CID agents are authorized to conduct search and seizure of government owned/controlled computers and other electronic media, when such search and/or seizure is required to discover and preserve evidence. Factors to be considered when making a determination to search government-owned computers and other electronic media and/or seize it as evidence are: the seriousness of the offense(s) under investigation, the potential or probability for loss of evidence if the computer or electronic media is not seized, the impact such seizure will have on an organization's ability to continue its mission, and whether the evidence sought could be obtained by other means in lieu of search and seizure of the government-owned/controlled computer or electronic media. If time permits, agents and LEOs shall consult with the respective Staff Judge Advocate, Military Justice Officer or assigned Trial Counsel prior to executing a search or seizure of government owned/controlled computers and electronic media.

2. To search and/or seize data from government-owned electronic sources, CID agents shall submit a written request to the MITSC via the Department of Public Safety (DPS) and the S-6, MCB Camp Lejeune. The Provost Marshal, Deputy Provost Marshal and CID Investigations Officer are authorized to sign such requests on behalf of the DPS. All requests shall include the corresponding PMO Case Control Number (CCN). NCIS agents shall submit written requests to MITSC via a supervisory special agent and the S-6, MCB Camp Lejeune. All requests shall include the corresponding NCIS Case Number. Requests should be reviewed and forwarded expeditiously in order to aid in the rapid completion of investigations. Upon receipt of approved requests, the MITSC shall provide the requested data to the agent. The aforementioned procedures do not apply to requests for data by CID or NCIS agents requesting data pursuant to a command authorized search warrant, Federal search warrant, court order, administrative subpoena or grand jury subpoena. In such a case, the agent may communicate directly with the MITSC to retrieve the requested data. If time permits, agents shall

consult with the respective Staff Judge Advocate, Military Justice Officer or assigned Trial Counsel prior to executing the warrant or subpoena.

3. Non-Department of the Navy (DON) LEOs. All requests by non-DON LEOs shall be vetted through NCIS, whenever time permits. The NCIS Special Agent in Charge at Camp Lejeune is the primary point of contact for such requests. If time does not permit the coordination of the effort through NCIS, electronic data may be released to agents/officers of other law enforcement organizations if acting pursuant to a Federal search warrant, court order, administrative subpoena or grand jury subpoena. In any case, release of electronic data must be to properly credentialed agents/officers who are acting within the purview of duly authorized investigations or the execution of a judicial court order, e.g., subpoena or warrant.

(2) All requests for data from government-owned electronic media will be reviewed by the S-6, MCB Camp Lejeune for completeness. Upon receipt of the order from the S-6, MITSC will request data retrieval up to 30 days (longer if the person retains a personal folder file (PST)) from Marine Corps Network Operation Security Center (MCNOSC) S-3. After retrieving the data, MCNOSC will send it to MITSC along with a chain-of-custody letter. MITSC will then provide the requested data and the chain-of-custody letter to the requesting party.

(3) Video surveillance footage, such as footage of access control points, secure areas and public areas, need not be requested by formal correspondence and may be requested by NCIS or CID agents via telephone or e-mail correspondence to the appropriate MITSC or S-6 staff. However, the request must be within the operational capacity and scope of authority of the S-6, MCB Camp Lejeune and the requestor must provide the CCN or nature of the investigation. Reasonable requests shall be granted. Issues concerning the reasonableness of a request will be directed to the SJA, MCB Camp Lejeune.

g. The procedures and standards set forth in paragraph 4f do not apply to searches of computers and other electronic media not owned or controlled by the government. Such privately-owned electronic devices and media, to include but not limited to cellular phones, personal digital assistants, flash drives, compact discs, secure digital cards, and personal computers may be searched only pursuant to a duly executed, command-directed search authorization, Federal search warrant, court order, administrative subpoena or grand jury subpoena that specifically contemplates the search of such types of devices or media. However, if an LEO has probable cause to believe that evidence

of a crime exists on such devices or media, the LEO may take custody of the device and power it off in order to preserve evidence. After seizure based upon an LEO's probable cause, the LEO should, as soon as reasonably possible, seek a command-directed search authorization from the appropriate command or a Federal search warrant.

h. Search Authorization. When acting in compliance with the provisions of this Order, commanding officers are empowered to grant search authorizations within the area of their respective commands. In some cases, tenant commanders may restrict the authority of their subordinate commanders to authorize searches. Those restrictions will apply when consistent with this Order. An executive officer is not empowered to grant search authorizations, unless the executive officer has actually succeeded to command. In addition, an Officer of the Day (OOD) may not grant search authorizations in the absence of the commanding officer. If the commanding officer is temporarily unavailable, efforts should be made to freeze the scene while guidance is sought from the appropriate SJA. If possible, a search authorization should be written; however, if time does not permit, the authorization may be oral. If an oral search authorization is given, a written memorandum of the factual basis for the authorization should be prepared by the commanding officer as soon thereafter as possible. Commanders are encouraged to use the formats in Appendices A-1-N and A-1-O of reference (d) and found in enclosures (1) and (2) for recording information pertaining to search authorizations.

5. Administration and Logistics. Not applicable.

6. Command and Signal

a. Command. This Order is applicable to Marine Corps Base, Camp Lejeune and all personnel found thereon.

b. Signal. This Order is effective the date signed and will remain in effect until revision or when indicated by appropriate authority.


D. J. LECCE

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SJA

6 MAR 2012

BASE ORDER 5810.3H Ch 1

From: Commanding Officer
To: Distribution List

Subj: AUTHORITY TO DIRECT AND CONDUCT CERTAIN TYPES OF SEARCHES
AND SEIZURES ABOARD MARINE CORPS BASE, CAMP LEJEUNE

Encl: (1) New page inserts to BO 5810.3H

1. Situation. To transmit new inserts to the basic Order.

2. Mission

a. To transmit new page inserts and issue a change transmittal to the basic Order.

b. Summary of Changes. Changes reflect a U.S. Supreme Court decision (U.S. v. Jones) regarding the use of Global Positioning System (GPS) monitors to track automobiles.

3. Execution. Remove present pages 5 through 9 and replace with corresponding renumbered pages contained in the enclosure.

4. Administration and Logistics. File this Change transmittal immediately behind the signature page of the basic Order.


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DEPARTMENT OF THE NAVY

PERMISSIVE AUTHORIZATION FOR SEARCH AND SEIZURE**1. ADVISORY**

I, (full name) _____

after being advised by _____

that the _____

is conducting an investigation in to the offense(s) of _____

have been requested to permit a search of my _____

2. CONSTITUTIONAL RIGHT

I have been informed of my constitutional right to refuse to permit this search in the absence of a search warrant. In full understanding of this right, I have nevertheless decided to permit this search to be made.

3. PERMISSION

This search may be conducted on (date) _____

by _____

and I hereby give him/her/them my permission to remove and retain any property or papers found during the search which are desired for investigative purposes.

4. FREE DECISION

I make this decision freely and voluntarily and it is made with no threats having been made or promises extended to me.

a. Date

b. Signature

5. WITNESSES

a. Date

b. Signature

6. TIMES OF SEARCH

a. Date

b. Signature

Enclosure (1)

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.

2. Other than his own prior knowledge of facts relevant thereto, all information considered by the A-1-n(1) individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God? (This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.)

3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) fruits of a crime (the results of a crime such as stolen objects); (2) instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) contraband (items, the mere possession of which is against the law-- marijuana, etc.); or (4) evidence of crime (example: bloodstained clothing of an assault suspect).

5. Before authorizing a search, probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

a. An offense probably is about to be, or has been committed;

b. Specific fruits or instrumentalities of the crime, contraband or evidence of the crime exist; and

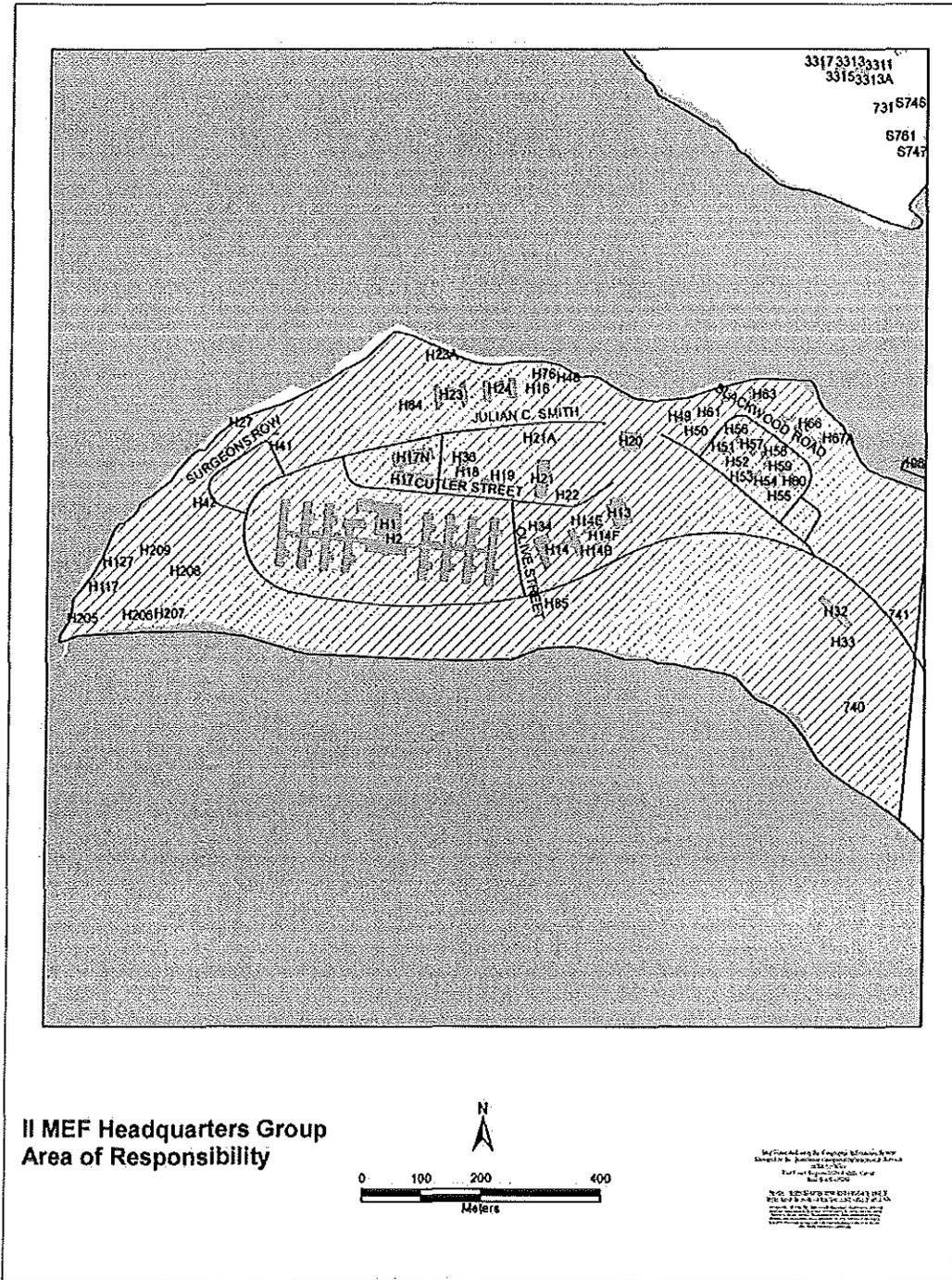
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c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances, or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists. If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

AREA COMMANDERS ASSIGNMENTS

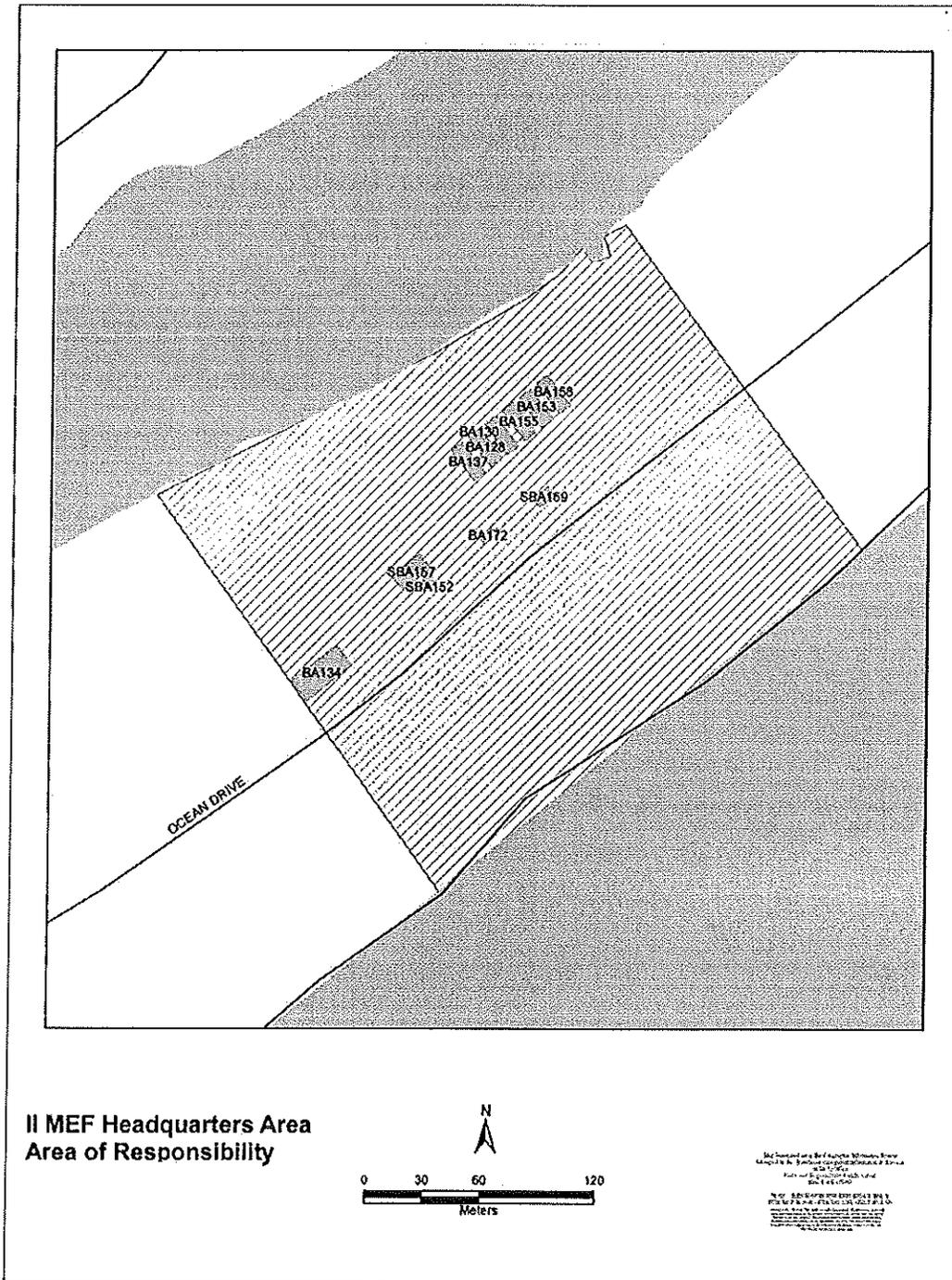
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ENCLOSURE (3)

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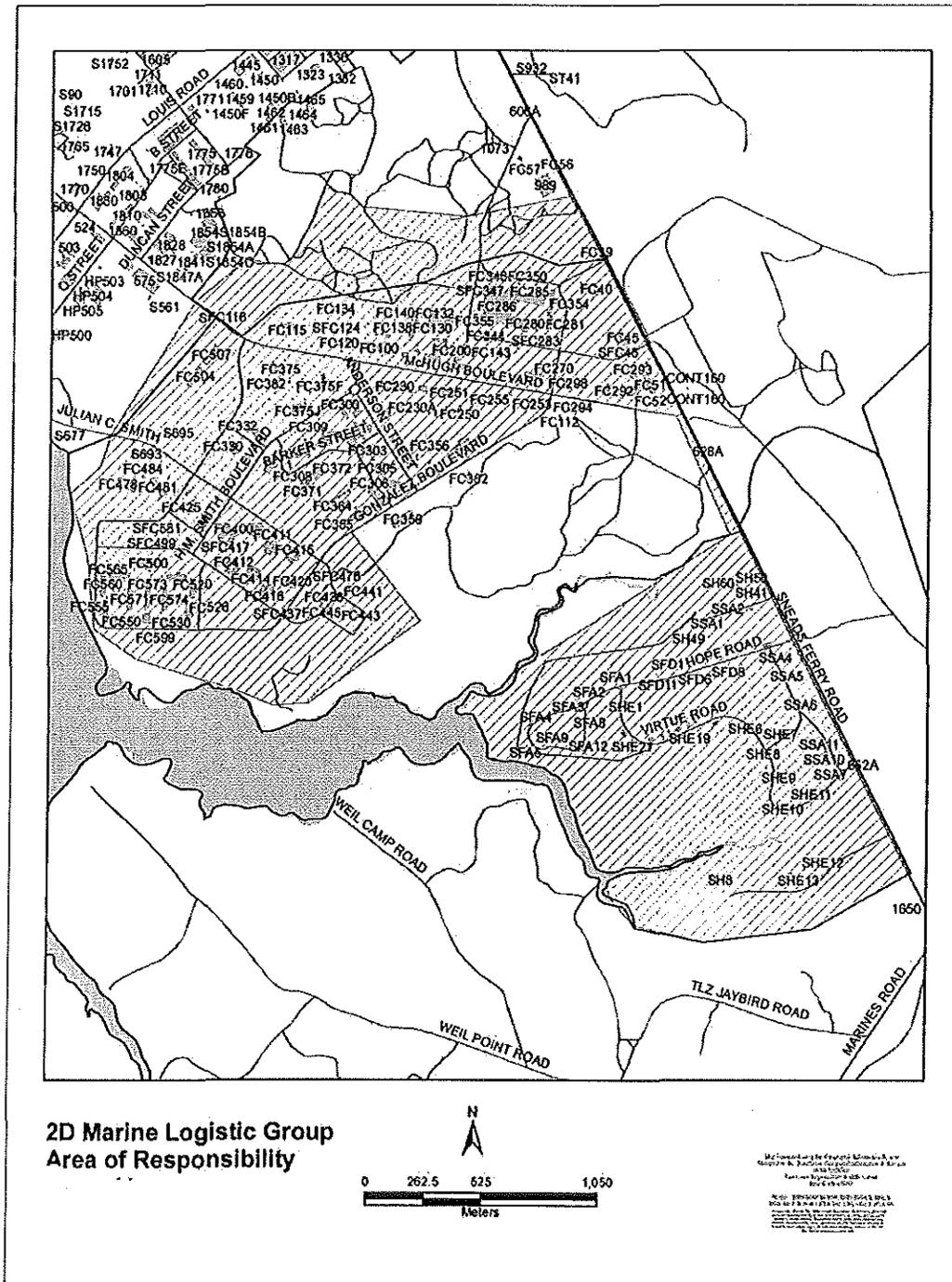
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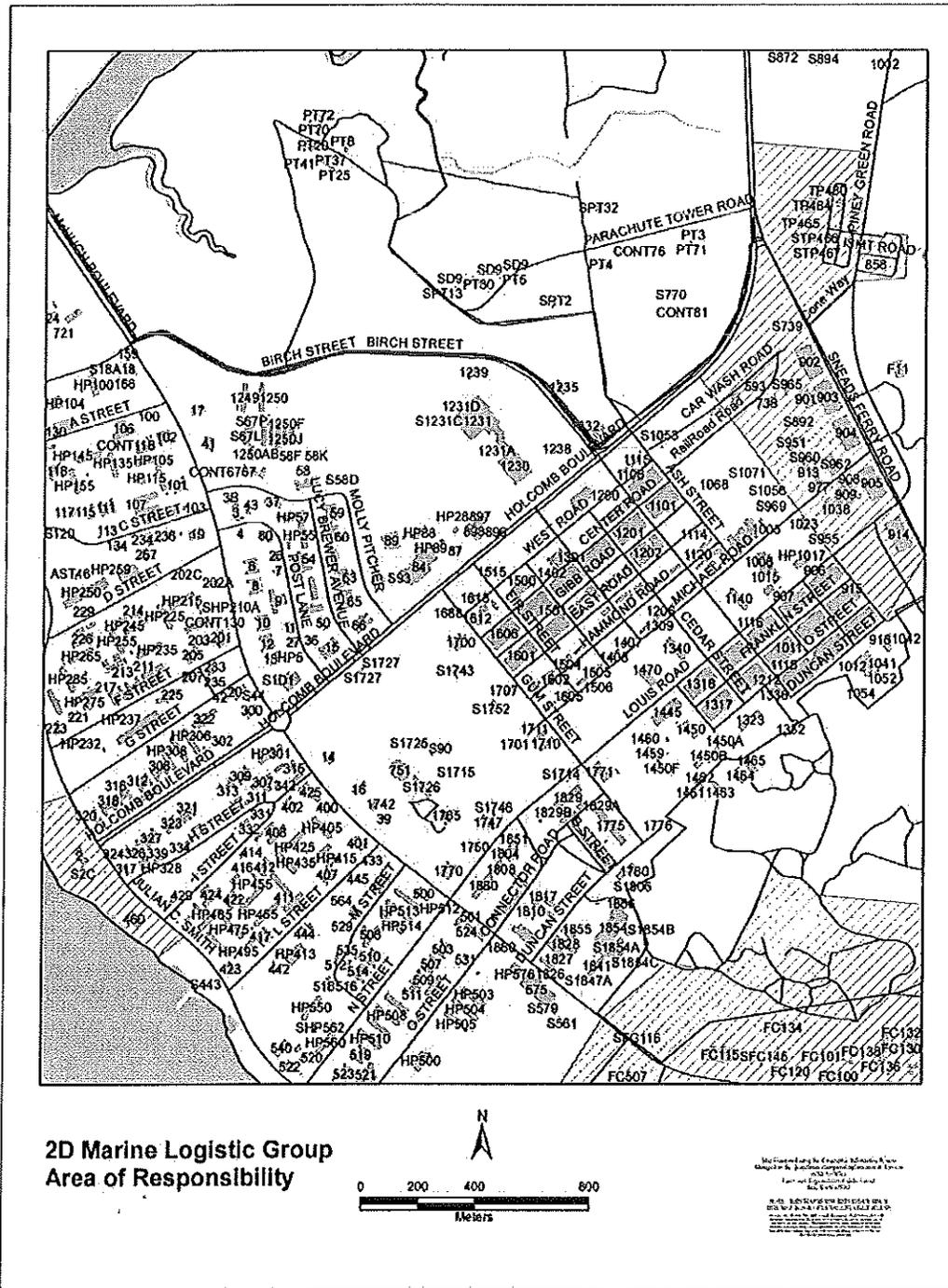
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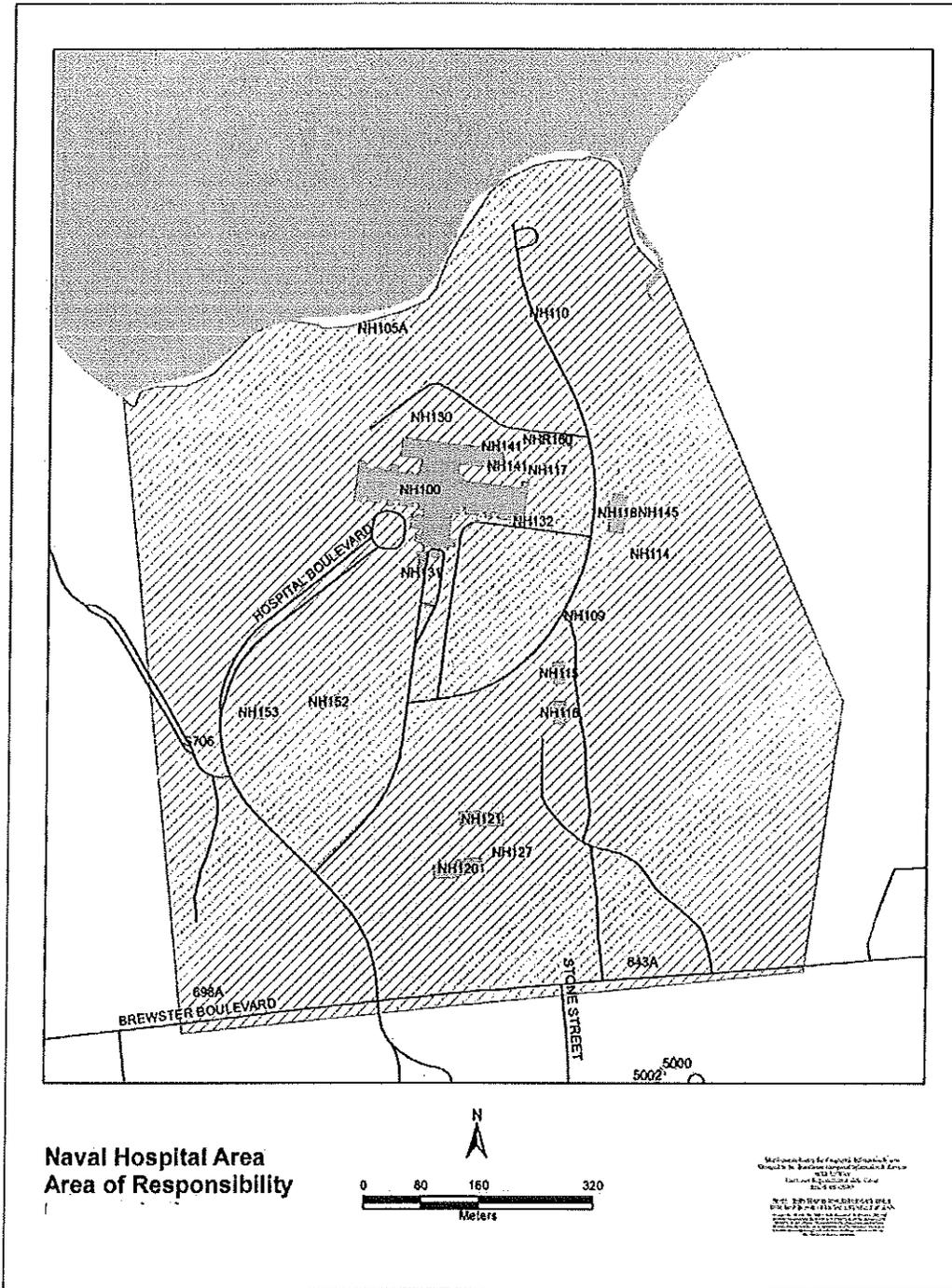
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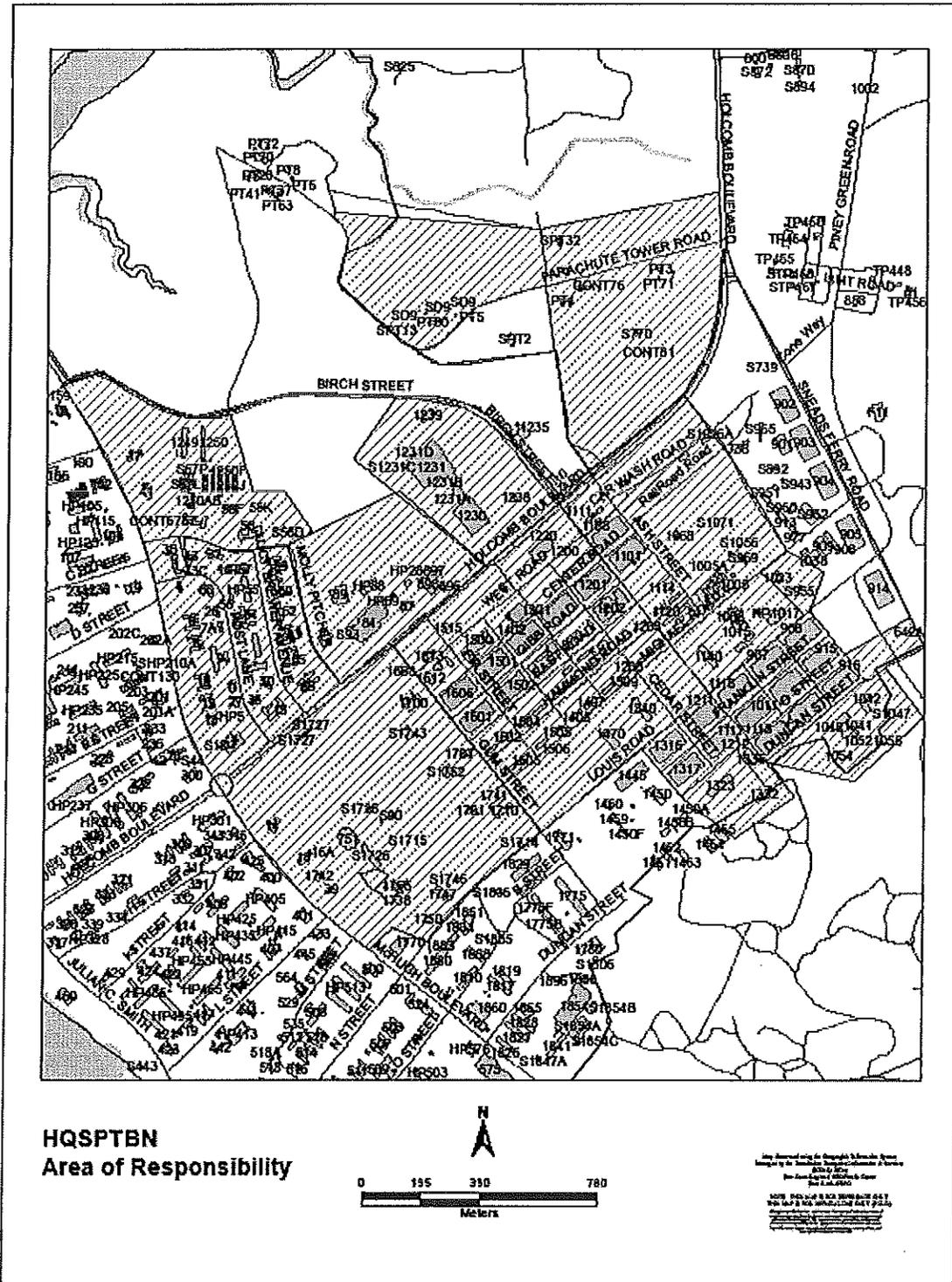
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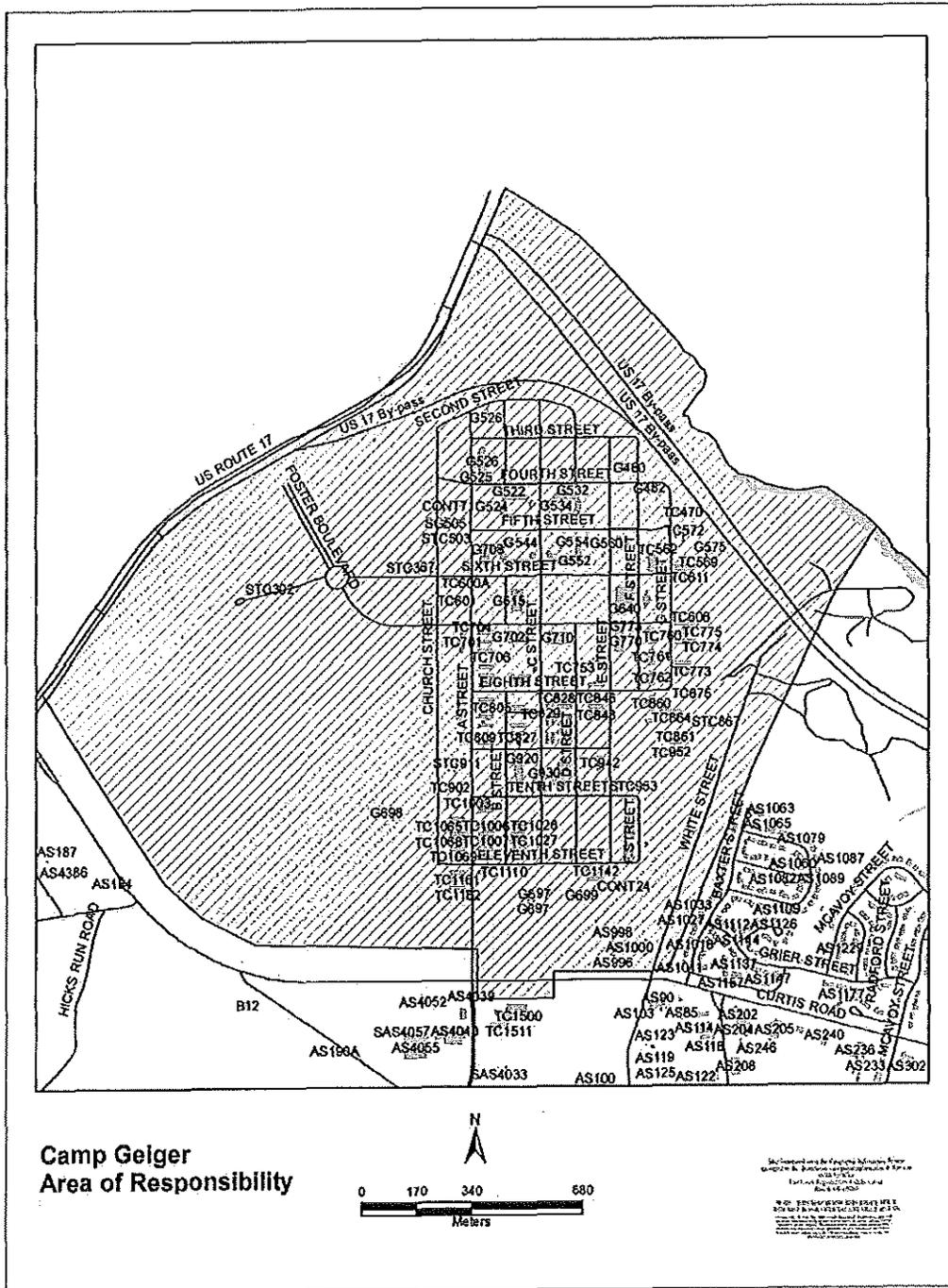
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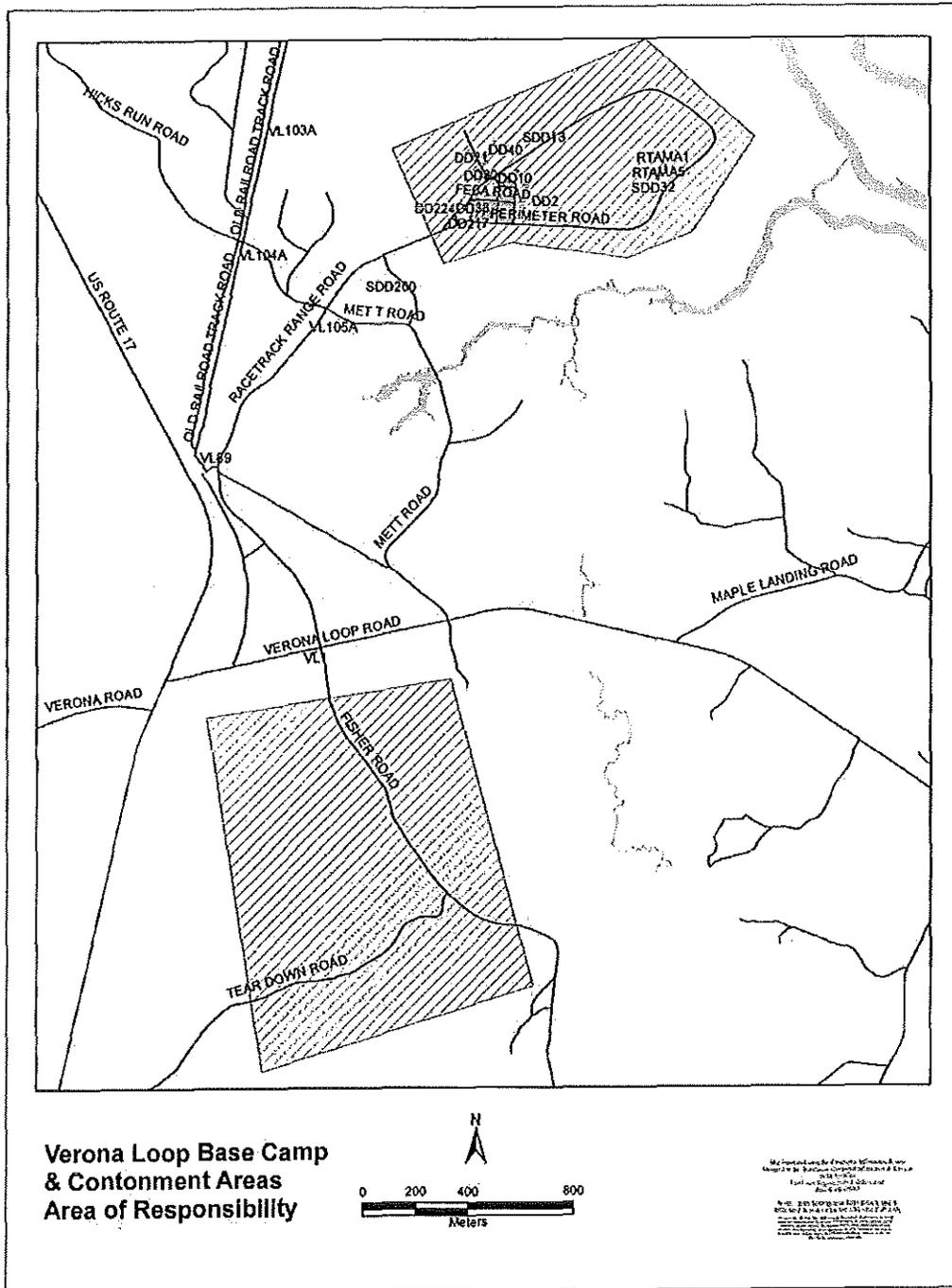
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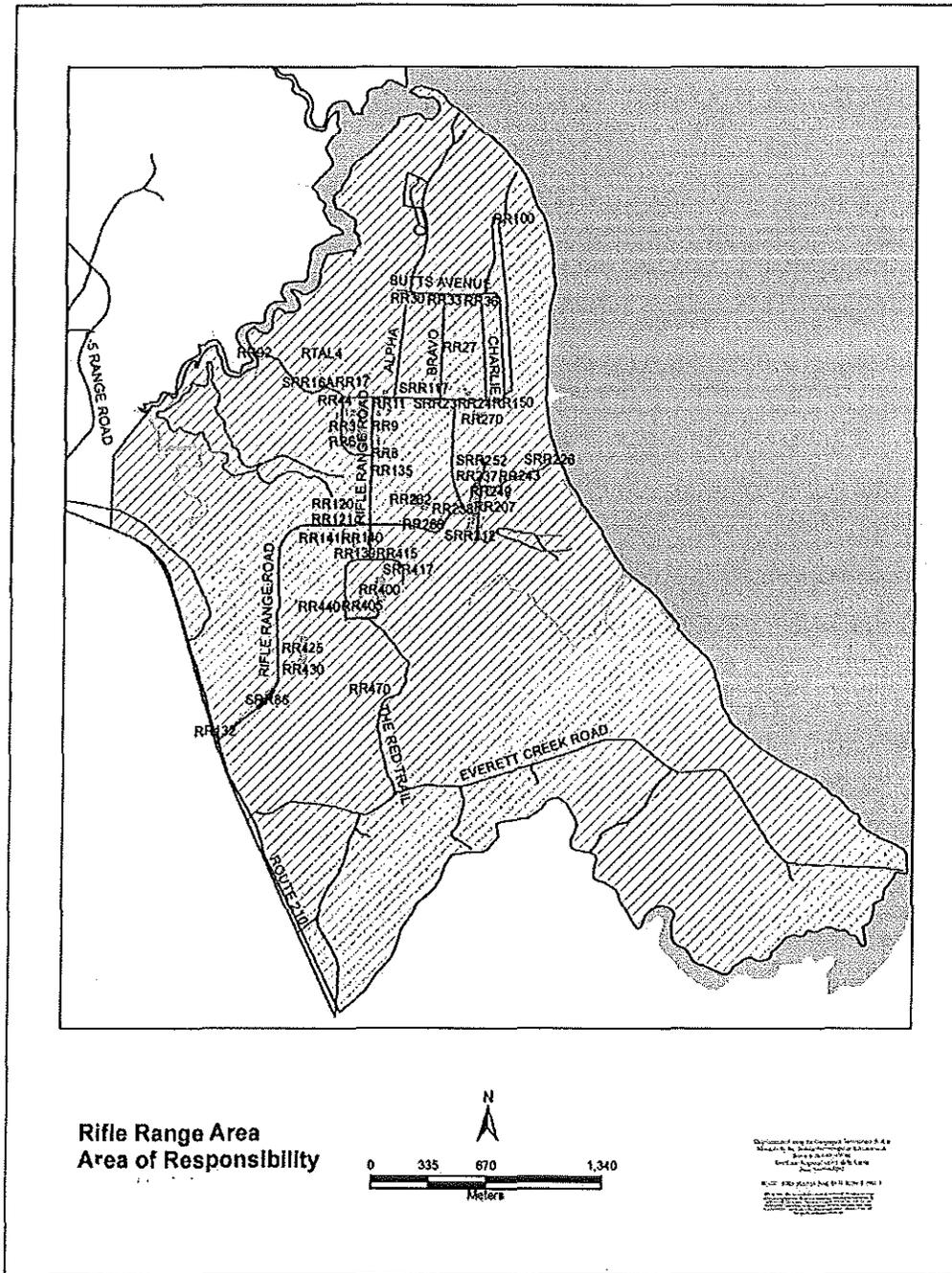


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ENCLOSURE (3)