



DEPARTMENT OF THE NAVY
BASE REALIGNMENT AND CLOSURE
PROGRAM MANAGEMENT OFFICE WEST
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N00221_001118
MARE ISLAND
SSIC NO. 5090.3.A

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Ser BPMOW.MD\0655
July 2, 2007

Mr. Ryan Olah
U.S. Fish and Wildlife Service
Chief Coast Delta Branch
2800 Cottage Way, Rm W-2605
Sacramento, CA 95825

Mr. Calvin Fong
U.S. Army Corps of Engineers
Regulatory Branch Chief
333 Market Street, 8th Floor
San Francisco, CA 94105

Dear Mr. Olah and Mr. Fong:

**SUBJECT: BIOLOGICAL EVALUATION FOR THE PAINT WASTE AREA,
INSTALLATION RESTORATION (IR) SITE 04 AND IR SITE 05
AT THE FORMER MARE ISLAND NAVAL SHIPYARD, VALLEJO,
CALIFORNIA**

The Department of the Navy (Navy) is proposing a time critical removal action to conduct soil removal within several sites at the former Mare Island Naval Shipyard (MINS) in Vallejo, California (Figure 1). Sites include the paint waste area (PWA) (Figure 2); Installation Restoration Site 04 (IR04) Subarea 3 (Figure 3); and IR05 (Figure 4). The proposed removal action will be conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. Pursuant to Section 121(d) of CERCLA, the Navy evaluated the Coastal Zone Management Act (CZMA), the Clean Water Act (CWA) and the Endangered Species Act (ESA) as potential applicable or relevant and appropriate requirements (ARARs) for the proposed removal action (enclosure 1). After a thorough evaluation, the Navy has identified substantive provisions of the ESA as an ARAR for all three removal action sites and the CWA for IR04 and IR05. Accordingly, the Navy has prepared this biological evaluation (BE) of the proposed removal actions.

The CZMA (16 U.S.C. §§ 1451-1464) and the accompanying implementing regulations at 15 C.F.R. § 930 require all federal agencies conducting or supporting activities affecting the coastal zone to conduct or support those activities in a manner consistent with the approved state coastal zone management programs. However, the CZMA § 304(1) specifically excludes federal land from the definition of a coastal zone. Thus, this potential ARAR is not applicable because federal land is excluded from the definition of a coastal zone and the proposed project will have no reasonably foreseeable effect on the adjacent San Francisco Bay coastal zone, as defined by the McAtteer-Petris Act.

Pursuant to Section 404 of the CWA (33 U.S.C. 1344), the U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged or fill material into waters of the U.S. (WoUS), including wetlands. Wetlands are areas frequently inundated by water and able to support vegetation typically adapted for life in saturated soil conditions.

In 2001, the Supreme Court ruled, in Solid Waste Agency of Northern Cook County (SWANCC) v. USACE, that the USACE could not assert regulatory jurisdiction per the CWA over isolated, non-navigable, intrastate waters based solely on the use of such waters or wetlands as habitat by migratory birds. For the proposed CERCLA removal action described herein, the Navy has determined the proposed work within the PWA will not impact WoUS since the former dredge ponds located nearby are non-tidal, isolated, non-navigable, and intrastate wetlands not hydrologically connected to San Pablo Bay.

The remainder of this letter addresses the Navy's measures to comply with the ESA at all three removal action sites and the CWA at IR04 and IR05.

SITE LOCATIONS

The Paint Waste Area (PWA) is located within Reuse Parcel XVI at Mare Island and formerly contained three piles of abandoned paint waste and other surface debris. The area is approximately ¼ mile south of Building 505 (currently the US Geologic Survey Mare Island Field Office) and ¾ mile east of the tidal marsh on the western side of Mare Island bordering San Pablo Bay. The area is a former dredge pond that received dredge spoils from Mare Island Strait. The elevation of the paint waste piles was approximately 1 foot above the natural grade of the surrounding non-tidal wetland habitat vegetated predominantly with pickleweed. The non-tidal wetland adjacent to the paint waste area likely provides habitat for the SMHM, but it has not been formally designated as critical habitat. Given the close proximity of this wetland to the large tidal marsh on the western side of Mare Island, it is reasonable to assume that the SMHM utilizes this habitat area.

Installation Restoration Site 04 (IR04) is located within Reuse Parcel V at Mare Island and is a former open air sandblast site. The area adjoins Mare Island Strait and lies approximately ¾ mile north of the confluence of Mare Island and Carquinez Straits. The site consists of four habitats: the upland, tidal wetland, mudflat, and offshore habitat; however, only the upland area and some marginal tidal wetland habitat will be within the proposed work area. The upland area is marginal habitat with ruderal (opportunistic) vegetation consisting of non-native grasses and other vegetation used in landscaping. The tidal wetlands border the entire eastern side of the area along Mare Island Strait and are dominated by *Scripus* sedge, some pickleweed, saltgrass (*Distichlis spicata*) and sea-blite (*Sueda* sp.). The tidal wetland adjacent to IR04 is not likely to provide habitat for the SMHM, given the scarcity of pickleweed, frequent wave action from passenger ferries, abundance of Abrasive Blast Material (ABM), and the significant distance of this wetland from other, larger wetlands.

Installation Restoration Site 05 (IR05) is located within Reuse Parcel VII-B at Mare Island and is a former ordnance disposal and burning area. The area adjoins Carquinez Strait on the southern shore of Mare Island. Three habitats have been identified in IR05: upland, nontidal wetland, and tidal wetland. The highly disturbed upland habitat consists of a broad, relatively flat area that is partially paved with asphalt. Much of the upland area is littered with debris. As a result, this habitat mostly supports ruderal vegetation, including some grass and shrub species. The nontidal wetland habitat consists of former tidal wetland areas that have been altered by the construction of levees and berms. This habitat contains shallow depressions that are characterized by standing water during the winter and spring and dry conditions during the summer and fall.

This habitat is dominated with vegetation including sedge, rushes, and pickleweed. As a result, this viable habitat contains various species of invertebrates (including species of Corixidae, Chironomidae, Hydrophilidae, and Ephydriidae), birds, small mammals, amphibians, and reptiles. The tidal wetland habitat includes both the lowland and tidal wetland subareas. This habitat consists of a low-lying, relatively flat area between the uplands and Mare Island Strait and is influenced by tidal action. This habitat is also termed a coastal brackish marsh, as it represents a relatively narrow band where fresh water from the Napa River mixes with tidal salt water from Carquinez Strait. This habitat, which is generally between 150 and 400 feet wide, is dominated with vegetation including sedge and pickleweed. As a result, this viable habitat contains various species of invertebrates (including snails, mussels, and insects), birds, small mammals, amphibians, reptiles, and, at high tide, fish.

PREVIOUS SITE ACTIVITIES

PWA - The Navy removed the paint waste piles in October 2003, as described in the Excavation Plan for Paint Waste Areas IA I Reuse Parcel XVI, of October 1, 2003 and in the Final Post-Construction Report for the Paint Waste Area Investigation Area I Reuse Parcel XVI, of April 15, 2004. The San Pablo Bay Refuge Manager, Ms. Smith, met with Navy staff and subcontractors to discuss appropriate measures to avoid disturbance of the Salt Marsh Harvest Mouse (SMHM). Refuge staff cleared upland vegetation adjacent to the PWA for the designated staging area. A narrow path for equipment to move between the staging area and the paint waste excavation area was cleared by hand (as recommended by Refuge staff) to remove existing upland and wetland vegetation.

Initially, it was estimated that approximately 90 cubic yards of paint waste mixed with soil and other debris would be removed. During excavation, an additional, laterally continuous area of buried paint cans was discovered beneath the paint waste piles, which increased the actual volume of the paint waste and paint impacted soil excavated to approximately 520 cubic yards. Once the paint wastes were excavated and characterized, they were disposed of at an offsite facility.

Under contract with the Navy, Sullivan Consulting Group (SCG) and Tetra Tech EM Incorporated (Tetra Tech), conducted soil and groundwater sampling at the PWA, as described in the Draft Preliminary Assessment/Site Inspection of the Paint Waste Area, Investigation Area I Reuse Parcel XVI, of February 2005 (SulTech 2005a). The purpose of the sampling was to confirm all the paint waste was successfully excavated and that it had not contaminated adjacent areas or groundwater. Eleven soil borings were advanced to a maximum depth of eight feet below ground surface. Four soil borings were located within the former excavation area and seven were located around the perimeter of the excavation (some within the adjacent non-tidal wetland area). Groundwater samples were collected at three of the seven soil boring locations from the perimeter of the excavation. In addition, soil and groundwater samples were collected from eight borings in the upland area adjacent to the site (Figure 2). Results of the PA/SI indicated the presence of metals and pesticides in the wetland soils surrounding the paint waste excavation area at levels of potential ecological concern. The PA/SI also indicated the presence of metals exceeding ecological screening criteria in the nearby upland area soil.

Prior to undertaking this action, the Navy determined the proposed action was not likely to adversely affect the SMHM and initiated an informal consultation with the U.S. Fish and Wildlife Service (FWS) (DON, 2004 and enclosure 2). FWS concurred in writing on August 5th, 2004 with this determination (FWS, 2004).

IR04 – IR04 has been extensively investigated, with nine environmental studies or investigations conducted from 1983 to 1999. Currently, a draft final Remedial Investigation is under review by the Department of Toxic Substances Control (DTSC) and the United States Environmental Protection Agency (USEPA). An intrusive investigation to locate and remove suspected munitions items was carried out between September 1999 and June 2000. This investigation included shoreline marsh areas within IR04 and required implementation of mitigation measures to protect endangered species. A second intrusive investigation was carried out during 2006 within the mudflat area of IR04. Neither investigation discovered any munitions, nor were any endangered species encountered.

IR05 - IR05 has been extensively investigated, with seven environmental studies or investigations conducted from 1983 to 2002. A draft removal investigation report was submitted to the regulatory agencies in September of 2002. A time critical removal action for munitions was conducted between 1995 and 1997, which excavated over 35 acres of upland and lowland subareas to a depth of up to four feet. This removal action included tidal and non-tidal wetland areas and required implementation of mitigation measures to protect endangered species. No endangered species were encountered during previous removal actions. A second intrusive investigation is currently in progress.

PROPOSED REMOVAL ACTIVITIES

PWA - Under contract with the Navy, Weston Solutions will conduct field work to excavate and remove soil surrounding the PWA that exceeds the cleanup criteria for metals and pesticides developed as part of the IA H1 Final Removal Design Plan for wetland creation areas (Weston Solutions, 2006). The cleanup criteria for PWA was adopted from the IA H1 Final Removal Design Plan because both sites are intended for similar future land use as open space and share a common boundary. Four locations totaling approximately 2500 square feet will be excavated to 2 feet below ground surface. Following excavation of the impacted soil, confirmation samples will be taken to verify that all soil exceeding cleanup criteria has been removed. If confirmation sample results indicate soil contaminants remain above the cleanup criteria, additional soil excavation will be performed. Following removal of all impacted soil, the excavations will be backfilled with soil meeting the criteria specified in the IA H1 Final Removal Design Plan for wetland creation areas. In addition, soil excavation will be performed on adjacent, nearby upland areas to remove waste debris piles and soil impacted by metals left from historic Navy waste disposal activities.

IR04 - Under contract with the Navy, Weston Solutions will conduct field work to excavate and remove ABM to the maximum extent practicable within the upland area of IR04. As the ABM extends from the upland portion of the site into Mare Island Strait, a portion of the shoreline wetland will be excavated where ABM is present on the surface and near surface. However, no portion of the mudflats below the high tide line will be excavated.

Following excavation of the ABM and impacted soil, confirmation samples will be taken to verify that all soil exceeding cleanup criteria has been removed. If confirmation sample results indicate soil contaminants remain above cleanup criteria, additional soil excavation will be performed. Following removal of all impacted soil, the excavated pits will be backfilled with soil meeting the cleanup criteria specified in the IA H1 Final Removal Design Plan for upland fill. The potential disturbance of any jurisdictional wetlands within IR04 would be temporary, and the net result of this removal action will be enhancement of wetland habitat along the shoreline.

IR05 – Under contract with the Navy, Weston Solutions will undertake fieldwork to excavate and remove soil within the wetland, lowland and upland areas of IR05 which have been impacted by metals. Only a small portion of the total area anticipated to be excavated is considered wetland habitat. Additional characterization sampling within wetland areas will be performed to determine if further excavation in the wetland areas is appropriate. Upland, lowland and wetland areas will initially be excavated down to 2 feet below ground surface. Following excavation of the impacted soil, confirmation samples will be taken to verify that all soil exceeding cleanup criteria has been removed. If confirmation sample results indicate soil contaminants remain above cleanup criteria, additional soil excavation will be performed. Following removal of all impacted soil, the excavations will be backfilled with soil meeting the criteria specified in the IA H1 Final Removal Design Plan for wetland creation areas or upland areas as applicable. It is estimated that approximately 50,000 square feet of wetlands could be affected, depending on the results of the additional characterization sampling. The disturbance of any WoUS or wetlands within IR05 would be temporary and the net result of the removal activities will be enhancement of the tidal flow and wetland habitat within the area.

PROPOSED AVOIDANCE MEASURES AND PROCEDURES

Careful planning and precautions in the field will be taken to avoid and/or minimize any effects to the wetland habitat and the SMHM. The excavation work plan has been developed with input from contract biologists (Harvey and Associates), who have significant experience with the SMHM and who have previously been involved with SMHM avoidance procedures for various construction sites on Mare Island.

In order to avoid impacts to the SMHM and minimize impacts to wetlands and WoUS, a quality assurance/quality control checklist will be followed and documented in the daily quality assurance sheet. The specific measures established to minimize potential impacts to the SMHM and the wetland habitats include the following:

- Excavation activities will be conducted when the non-tidal seasonal wetlands are dry.
- A Navy contracted biologist will conduct a Biological Resource Education Program briefing to all contractor and subcontractor personnel prior to any site entry.
- A qualified biological monitor will provide oversight during the project activities and will be present to ensure SMHM avoidance and minimization measures are properly implemented.
- If any areas with pickleweed need to be cleared for excavation or sampling purposes, vegetation will be cut using hand-held mechanized cutting tools.
- Non-wetland vegetation in upland areas adjacent to pickleweed will be cut using ride-on powered mowers or other equipment to minimize potential cover for the SMHM within work areas. Equipment and personnel will be limited to the areas where the vegetation has been cut.
- Silt fencing will be installed between areas of pickleweed and work sites to prevent re-entry of SMHM into cleared areas.
- A qualified biologist will monitor site fencing periodically to ensure it remains an effective barrier to prevent SMHM entry.

- A qualified biologist will survey fenced areas to ensure SMHM are not present within the excavation areas prior to commencing excavation activities.
- Excavation and haul equipment will be confined to the access routes, designated staging areas and designated excavation areas.
- The equipment decontamination area will be located in the designated upland staging area away from wetland habitat.
- If a SMHM is observed, work will be stopped and avoidance measures will be re-evaluated with the DON and USFWS.
- Upland routes covered with non-native vegetation will be utilized as access routes to the excavation sites, to the maximum extent practicable.
- All nationwide permit general conditions will be followed.

The same planning and procedures were followed during the previous excavation and sampling events and were proven effective and protective of the SMHM and wetlands.

SALT MARSH HARVEST MOUSE LIFE HISTORY

The SMHM is a federal- and state-listed endangered species. Historically, the SMHM has been found in the saline emergent wetlands of San Francisco Bay and its tributaries (LSA Associates, Inc. 2003). At least 75 percent of all the tidal marshes around San Francisco Bay have been filled in or destroyed over the last 150 years. As a result, the SMHM populations in the more highly developed areas of San Francisco Bay are fragmented and small, or extinct. The highest consistent populations are found in salt marshes along San Pablo Bay, including Mare Island (Shellhammer 2000).

The SMHM is dependent on the thick, perennial cover of salt marshes, primarily pickleweed habitat.

It has been reported that SMHM do intermittently utilize and move through grassland areas; however, Johnson and Shellhammer (1988) determined that the SMHM primarily remain in pickleweed areas. At Mare Island, the SMHM is found in wetlands with pickleweed. SMHM surveys were conducted at Mare Island by Michael Bias for the Navy from 1989 through 1992 (Bias 1994). SMHM were caught in all sample grids including the non-tidal wetland near the PWA (sample grid 10) and within Dredge Pond 7S (sample grid 26). Former Dredge Pond 7S is included within the IR05 site boundary and includes a substantial upland area and pickleweed non-tidal wetlands. The sample grids near the PWA and former Dredge Pond 7S were identified as being the most vegetatively diverse of the sample grids, typically having greater than ten percent cover for grasses, forbs, and shrubs as compared with other areas predominately vegetated with pickleweed. The results of the studies showed the greatest SMHM populations were within the tidal marshes dominated by pickleweed, which is consistent with the literature. No mice were observed at the PWA during a previous excavation in October 2003 which was consistent with expectations since the SMHM is generally considered nocturnal (Zeiner and Others, 1990). No SMHM trapping was conducted along Mare Island Strait during the Bias study, which included IR04.

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DETERMINATION

The avoidance and minimization measures, including the presence of a biological monitor, will ensure potential impacts to the SMHM and pickleweed habitat are minimal. In addition, equipment will be confined to access roads and staging areas whenever possible. Much of the proposed soil excavation at the PWA will be within the previous excavation footprint. Since the proposed excavation is limited to this area, the excavation and subsequent sampling are expected to have an insignificant effect on the cover and forage available to the SMHM. The proposed soil excavations at IR04 and IR05 are within areas that are considered to have marginal habitat for the SMHM and are either significantly degraded by contamination (IR04) or have been subject to previous extensive intrusive investigations that did not encounter the SMHM (IR04 and IR05).

The Navy has made a "may affect is not likely to adversely affect" determination for the SMHM for the proposed removal action. Implementing all avoidance and minimization measures described above will ensure any negative short and long-term impacts to the SMHM and wetlands are avoided. By removing contamination within these areas, there will be long-term benefits to any SMHM that could use these areas for habitat in the future.

The Navy requests your concurrence with our determination and any comments on the enclosed draft work plan within 30-days from receipt of this letter (enclosure 3). The Navy appreciates your cooperation and efforts to assist us with meeting our removal action objectives at Mare Island. Please direct any questions or concerns regarding the removal action sites to Mr. Michael Bloom at (619) 532-0967 or via email at michael.s.bloom@navy.mil. If you have questions or concerns regarding biological resources please contact Ms. Lisa Heffernan at (619) 532-1448 or via email at lisa.heffernan@navy.mil.

Sincerely,



ANTHONY MEGLIOLA
Base Closure Manager
BRAC PMO West
By direction of the Director

Enclosure (1) Department of the Navy (DON). 2004. Letter Regarding CERCLA Response Action and ARAR Requirements Section 7 Concurrence Request, Paint Waste Area, Reuse Parcel XVI, Investigation Area 1, Mare Island Naval Shipyard, Vallejo, California. From Ms. Shannon Bryant, Navy BRAC PMO West. To Mr. Dan Buford, U.S. FWS. June 23

Enclosure (2) United States Department of the Interior, Fish and Wildlife Service (FWS). 2004. Letter Regarding Endangered Species Act Informal Consultation for Soil and Groundwater Sampling at the Paint Waste Area, Investigation Area I Reuse Parcel XVI, Mare Island Naval Shipyard, Solano County, California. From Ms. Cay Goude, U.S. FWS. To Ms. Shannon Bryant. August 5

Enclosure (3) CD Insert: Weston Solutions. 2007. Final Draft Work Plan Time-Critical Removal Action Installation Restoration Site 04, Installation Restoration Site 05, Parcel XVI Paint Waste Area, and Horse Stables Area, Former Mare Island Naval Shipyard, Vallejo, California. June

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Copies sent to:

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Mr. Brian Thompson
Regional Water Quality Control Board
San Francisco Bay Region
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Mr. Dennis Kelly
Tetra Tech EM Inc.
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San Francisco, CA 94105

Mr. Dwight Gemar
Weston Solutions, Inc
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References:

Bias, Michael. 1994. "Ecology of the Salt Marsh Harvest Mouse in San Pablo Bay." Dissertation for the degree of Doctor in Philosophy in Wildland Resource Science in the Graduate Division of the University of California, Berkeley

Department of the Navy (DON). 2004. Letter Regarding CERCLA Response Action and ARAR Requirements Section 7 Concurrence Request, Paint Waste Area, Reuse Parcel XVI, Investigation Area 1, Mare Island Naval Shipyard, Vallejo, California. From Ms. Shannon Bryant, Navy BRAC PMO West. To Mr. Dan Buford, U.S. FWS. June 23

Johnson, V. and H. Shellhammer. 1988. The Ecology of the Salt Marsh Harvest Mouse (*Reithrodontomys raviventris*) in a Diked Salt Marsh and Adjacent Grassland in Palo Alto, California. U.S. Fish and Wildlife Service

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Shellhammer, H. 2000. Baylands Ecosystem Species and Community Profiles: Life Histories and Environmental Requirements of Key Plants, Fish and Wildlife. Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. San Francisco Bay Regional Water Quality Control Board, Oakland, California

Sullivan Consulting Group and tetra Tech (SCG/Tetra Tech). 2003a. "Excavation Plan for Paint Waste Areas, IA I Reuse Parcel XVI, Mare Island, Vallejo, California." October 1

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SCG/Tetra Tech. 2003b. "Draft Sampling and Analysis Plan, Soil and Groundwater Sampling, Paint Waste Area, Investigation Area I Reuse Parcel XVI, Mare Island, Vallejo, California" December 18.

SCG/Tetra Tech. 2004. "Final Post-Construction Report for the Paint Waste Area, Investigation Area I Reuse Parcel XVI, Mare Island, Vallejo, California." April 19

United States Department of the Interior, Fish and Wildlife Service (FWS). 2004. Letter Regarding Endangered Species Act Informal Consultation for Soil and Groundwater Sampling at the Paint Waste Area, Investigation Area I Reuse Parcel XVI, Mare Island Naval Shipyard, Solano County, California. From Ms. Cay Goude, U.S. FWS. To Ms. Shannon Bryant. August 5

Weston. 2006. "Remedial Action Plan/Record of Decision/Resource Conservation and Recovery Act Closure Plan for Investigation Area H1"

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Blind copy to:
EVR.DS (Admin Record – Environmental, Mare Island [2 copies])
R. Palmer (RAB Library [2 copies] and CSO [1 copy])
T. Megliola
J. Emberger
M. Bloom
D. Godsey
M. Smits
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G. Lorton
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Serial File
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Typist: B. Foster, BPMOW.BF, 2-0914, MD:\MI ESA SECTION 7 LETTER (MGDV2)\1 JUL 07

Handwritten signatures and initials in the bottom right corner, including what appears to be 'J.M.', 'Dre', 'mgd', and 'H.O.'.

ENCLOSURE 1

CERCLA RESPONSE ACTION AND APPLICABLE OR
RELEVANT AND APPROPRIATE REQUIREMENTS
SECTION 7 CONCURRENCE REQUEST
PAINT WASTE AREA, REUSE PARCEL XVI
INVESTIGATION AREA 1

DATED 23 JUNE 2004

THIS RECORD IS ENTERED IN THE DATABASE AND FILED
AS

RECORD NO. N00221_003487

ENCLOSURE 2

LETTER REGARDING ENDANGERED SPECIES ACT
INFORMAL CONSULTATION FOR SOIL AND GROUNDWATER
SAMPLING AT THE PAINT WASTE AREA,
INVESTIGATION AREA I REUSE PARCEL XVI

DATED 05 AUGUST 2004

THIS ENCLOSURE WAS NOT RECEIVED IN THE
RESTORATION RECORD FILE.

FOR ADDITIONAL INFORMATION, CONTACT:

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SAN DIEGO, CA 92132

TELEPHONE: (619) 556-1280
E-MAIL: diane.silva@navy.mil

ENCLOSURE 3

CD INSERT FOR THE FINAL DRAFT WORK PLAN
TIME-CRITICAL REMOVAL ACTION
INSTALLATION RESTORATION SITE 04,
INSTALLATION RESTORATION SITE 05,
PARCEL XVI PAINT WASTE AREA,
AND HORSE STABLES AREA

DATED 01 JUNE 2007

THIS ENCLOSURE WAS NOT RECEIVED IN THE
RESTORATION RECORD FILE.

FOR ADDITIONAL INFORMATION, CONTACT:

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