



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Division of Ecological Services  
2800 Cottage Way, Rm. E-1803  
Sacramento, California 95825

September 29, 1987

Mr. C.T. Moyer III  
Department of the Navy  
Naval Air Station  
Moffett Field, California 94035-5000

Subject: Relevant and Appropriate Environmental Laws and Regulations Pertaining to Hazardous Substances Releases and/or Cleanup as Part of the Superfund Amendments and Reauthorization Act of 1986.

Dear Mr. Moyer:

In response to your September 15, 1987 letter (5090 Ser 00/2987), we are providing various citations of environmental law and regulations. These should be evaluated as part of the scoping process for the remedial investigation of the release and/or cleanup of hazardous substances at Moffett Naval Air Station. Appropriate and relevant environmental laws and regulations include the following:

- The Endangered Species Act of 1973 and appurtenant regulations of 50 CFR 17, 402 (Section 7 Consultation) and 424. When a project might potentially impact an endangered species or its critical habitat, the Section 7 process should be initiated. The formal process requires contact with the U.S. Fish and Wildlife Service (Service) to request a list of endangered species and their critical habitats, preparation of a Biological Assessment that evaluates potential effects of the proposed action, and formal consultation with the Service that results in issuance of the Service's Biological Opinion. Generally, under Section 7, activities carried out by Federal agencies may not jeopardize the continued existence of an endangered species or cause adverse modifications of critical habitat.

- Protection of Wetlands Executive Order 11990 and regulations in 40 CFR 6, as well as 40 CFR 230 Section 404 (b) (1), guidelines for disposal of dredge and fill materials as regulated by the U.S. Army Corps of Engineers. The fundamental precept to the guidelines is that dredged or fill material should not be discharged into aquatic ecosystems (including wetlands) unless the discharge will have no adverse impacts. The 404 (b) (1) guidelines require no discharge of dredge or fill material if (1) a practical alternative exists that would have less or no adverse impact on the wetland; (2) the continued existence of an endangered species is jeopardized; (3) it causes or contributes to significant degradation of wetlands; or (4) appropriate steps to minimize adverse impacts are not taken.

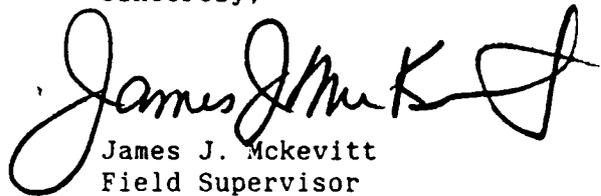
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· The wetland regulations listed above also initiate Service evaluation of potential project impacts to trust resources (migratory birds, anadromous fish) in accordance with the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act, Watershed Protection and Flood Prevention Act, and National Environmental Policy Act.

· Superfund Amendments and Reauthorization Act of 1986, Section 107 (d) requires Federal Trustees to assess damages for injury to, destruction of, or loss of natural resources under their trusteeship as a result of hazardous substances releases. If it can be shown that a hazardous substance release has caused damage to Trustee resources, the Federal Trustee can recover funds to restore, rehabilitate or acquire the equivalent of such natural resources.

I hope that the information provided will be of use in the remedial investigation planning process. We would appreciate the opportunity to review and comment on the remedial investigation plan as it is developed. Please contact Don Palawski of my staff at (916) 978-4613 if we can be of further assistance.

Sincerely,



James J. McKeivitt  
Field Supervisor

cc: AFWE, FWS, Portland OR.