



Cal/EPA

Department of
Toxic Substances
Control

700 Heinz Avenue
Suite 200
Berkeley, CA
94710-2737

October 17, 1996

Pete Wilson
Governor

James M. Strock
Secretary for
Environmental
Protection

Commander
Department of the Navy
Engineering Field Activity, West
Naval Facilities Engineering Command
Attn: Mr. Stephen Chao, Project Manager
900 Commodore Drive, Bldg. 101
San Bruno, California 94066-2402

Dear Mr. Chao:

**APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS
(ARARs) FOR MOFFETT FEDERAL AIRFIELD**

Enclosed please find ARARs provided by the California Department of Fish and Game (DFG) for the Stationwide Feasibility Study at Moffett Federal Airfield. Please incorporate the listed ARARs in the SWFS report. If you have any questions regarding these comments, please call me at 510-540-3830.

Sincerely,

C. Joseph Chao
Remedial Project Manager
Base Closure Unit
Office of Military Facilities

Enclosure

cc: Mr. Michael Rochette
Regional Water Quality Control Board
2101 Webster Street, Suite 500
Oakland, California 94612

Mr. Michael D. Gill
U.S. Environmental Protection Agency
Region IX, Mail Stop H-9-2
75 Hawthorne St.
San Francisco, California 94105

Ms. Patricia Velez
California Department of Fish and Game
20 Lower Ragsdale Drive, Suite 100
Monterey, California 93940

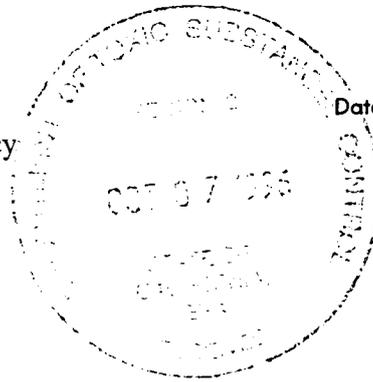
Mr. Stephen Chao
October 17, 1996
Page 2

Ms. Sandy Olliges
Assistant Chief
Safety, Health and Environmental Services
National Aeronautics and Space Administration
Ames Research Center
Moffett Field, CA 94035-1000

Mr. Peter Strauss
MHB Technical Associates
1723 Hamilton Avenue, Suite K
San Jose CA 95125

Mr. James G. McClure, Ph.D.
Moffett Field RAB, THE Committee
c/o Harding Lawson Associates
P.O. Box 6107
Novato, California 94948

Memorandum



Mr. Joseph Chou
California Environmental Protection Agency
Department of Toxic Substances Control
700 Heinz Avenue, Building F, Suite 200
Berkeley, California 94710

Date : September 30, 1996

From : Department of Fish and Game

Subject : **Applicable or Relevant and Appropriate Requirements (ARARs) for Moffett Federal Airfield, California (5920/60120/NTX 405 00:04)**

This memorandum is in response to your verbal request at the Stationwide Feasibility Study meeting that was held on September 20, 1996, to the Department of Fish and Game, requesting potential State location specific ARARs for Moffett Federal Airfield, California. The Department of Fish and Game (DFG) appreciates your request for providing State laws and regulations to guide the proposed removal actions at the above listed sites.

As the lead State agency for toxic cleanup, you are making an inquiry to DFG for purposes of coordination and definition of appropriate State cleanup requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as a portion of the RI/FS process. This letter will also serve to advise you of DFG's interest in coordinating any natural resource issues as one of the designated State natural resource trustees, which may be necessary should the release(s) of any hazardous materials at the subject sites affect State natural resources, pursuant to CERCLA.

Based upon information obtained on Moffett Federal Airfield and a site inspection conducted on September 18, 1996, DFG staff have identified potential areas and conditions that could affect State fish and wildlife resources.

Listed in the enclosed tables are the Fish and Game Code sections that are possible State location-specific ARARs or "to be considered" (TBCs). The specific citation and explanation for each listed ARAR and TBC are included.

Thank you for the opportunity to comment upon the ARARs request. If you have any questions regarding this memorandum or need additional information, please contact Ms. Patricia Velez, Senior Biologist, Military Facilities Team, California Department of Fish and Game, 20 Lower Ragsdale Drive, Suite 100, Monterey, California, 93940 or by telephone at (408) 649-2876.

A handwritten signature in black ink, appearing to read "Patricia Velez".

Patricia Velez
Senior Biologist
Moffett Federal Airfield, Program Manager

Enclosure: 4 pages

cc: See next page.

Mr. Joseph Chou
September 30, 1996
Page 2 of 2

cc: Department of Fish and Game

Mr. John Turner
Sacramento

Mr. Pete Phillips
Sacramento

Ms. Jennifer Decker
Sacramento

LOCATION SPECIFIC ARARs AND TBCs - MOFFETT FEDERAL AIRFIELD

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Wildlife species/habitats	Action must be taken for the general protection and conservation of fish and wildlife resources.	Fish & Game Code section 1600	This code section declares the protection and conservation of fish and wildlife to be an important public interest. This section is a general statement of policy that does not impose a substantive requirement. This section should be included as a TBC.
Streambed	The Department must propose reasonable modifications to public construction projects that would alter the bed, channel or bank of any river, stream or lake and may substantially adversely affect an existing fish or wildlife resource.	Fish & Game Code section 1601	This section requires notification to and action by the Department. It also imposes a substantive requirement to the extent it requires streambed alteration to not substantially adversely affect an existing fish or wildlife resource. The section is relevant to the extent the operations impact the beds, channel or bank of the Napa River. Section 1601 complements the operation of federal ARAR 40 CFR section 231.1, which authorizes the USEPA Administrator to prohibit activity whenever he determines that the discharge of dredge or fill material may have an "unacceptable adverse affect" on fish and wildlife. Section 1601 also complements the operation of federal ARAR 16 USC section 662, which requires the determination of possible damage to wildlife resources and the means and measures that should be adopted to prevent the loss of or damage to such resources caused by proposed streambed alterations. This section should be included as an ARAR.
Streambed	Any streambed may not be altered without first notifying the Department.	Fish & Game Code section 1603	This section requires notification to and action by the Department. Section 1603 also imposes a substantive requirement to the extent it requires streambed alteration to not substantially adversely affect an existing fish or wildlife resource. This section should be included as an ARAR.

LOCATION SPECIFIC ARARs AND TBCs - MOFFETT FEDERAL AIRFIELD

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Aquatic and Wildlife species/habitats	Action may be taken to collect damages for the taking of birds, mammals, fishes, reptiles or amphibians.	Fish & Game Code section 2014	This code section declares that it is policy of the state to conserve its natural resources. It allows the state to recover damages in a civil action against any person or local agency which unlawfully or negligently takes or destroys any bird, mammal, fish, reptile or amphibian protected by the laws of the state. This section should be included as an ARAR.
Endangered Species	Action must be taken to conserve endangered species, there can be no releases and/or actions that would have a deleterious effect on species or habitat.	Fish & Game Code section 2080	This section prohibits the taking, importation or sale of any species, or any part thereof, of an endangered species or a threatened species. This section should be included as an ARAR.
Rare native plants	Action must be taken to conserve native plants, there can be no releases and/or actions that would have a deleterious effect on species or habitat.	Fish & Game Code sections 2080 and 1900 <i>et seq.</i>	These code sections make provisions concerning native plant protection, including: criteria for determining endangered plant species; designation of endangered plants by the Fish and Game Commission; research by the Dept.; takings by the Dept. for scientific propagation purposes; other prohibitions on takings; exercise of enforcement authority; arrests and confiscation; carrying out of plant conservation programs by other state departments and agencies; an unauthorized public agency regulations pertaining to agriculture. Sections 1900, 1901, 1904, 1905, 1906, 1907, 1909, 1910, 1911, 1912, and 1913 are procedural and administrative in nature and do not impose any substantive requirements. Section 1908 imposes a substantive requirement for forbidding any "person" to take rare or endangered native plants. If rare or endangered plants are present, then sections 2080 and 1908 should be included as ARARs, and the other sections are TBCs.

LOCATION SPECIFIC ARARs AND TBCs - MOFFETT FEDERAL AIRFIELD

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Endangered Species	Action must be taken to conserve endangered species, there can be no releases and/or actions that would have a deleterious effect on species or habitat.	Fish & Game Code sections 2090-2096	These code sections comprise article 4 of chapter 1.5 of the California Endangered Species Act. These sections make provisions concerning Department coordination and consultation with state and federal agencies and with project applicants. These sections do not impose substantive requirements. These sections should be included as TBCs.
Wildlife Species	Action must be taken to prohibit the taking of birds and mammals, including taking by poison.	Fish & Game Code section 3005	This code section prohibits the taking of birds and mammals, including taking by poison. "Taking" is defined by Fish and Game Code section 86 to include killing. "Poison" is not defined in the code but contaminants of concern (heavy metals, herbicides and pesticides) are all poisons by definition. Federal law recognizes that poison may effect an incidental taking. (Defenders of Wildlife v. Administrator, Environmental Protection Agency (1989) 882 F.2d 1295.) This code section imposes a substantive, promulgated environmental protection requirement. Bird and mammal fatalities are not impossible under the circumstances at these sites, particularly if stockpiling results in increased concentrations of contaminants. This section should be included as an ARAR.

LOCATION SPECIFIC ARARs AND TBCs - MOFFETT FEDERAL AIRFIELD

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Aquatic habitat/species	Action must be taken if toxic materials are placed where they can enter waters of the State. There can be no releases that would have a deleterious effect on species or habitat.	Fish & Game Code sections 5650 (a), (b) & (f)	<p>These code sections prohibit the deposition into State waters of, <i>inter alia</i>, petroleum products [Section 5650 (a)], factory refuse [Section 5650 (b)], and any substance deleterious to fish, plants or birds [Section 5650 (f)]. These are substantive promulgated environmental protection requirements. These requirements impose strict criminal liability on violators. [People v. Chevron Chemical Company (1983) 143 Cal.App.3d 50.]. This imposition of strict criminal liability imposes a standard that is more stringent than Federal law. The extent to which each subdivision of Section 5650 is relevant and appropriate depends on site specific conditions or details.</p> <p>There is also a scientific/technical reason for inclusion of Section 5650 as a potential location specific ARAR. State and Federal water quality control standards are generally developed, utilizing data, information, and guidance from numerous sources. Federal water quality criteria may allow higher concentrations of chemicals for limited time periods, which can result in conditions which are deleterious to State fish, plants, or birds.</p>
Wetlands	Actions must be taken to assure that there is "no net loss" of wetlands acreage or habitat value. Action must be taken to preserve, protect, restore and enhance California's wetland acreage and habitat values.	Fish and Game Commission Wetlands Policy (adopted 1987) included in Fish and Game Code Addenda	This policy seeks to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California. Further, it opposes any development or conversion of wetland which would result in a reduction of wetland acreage or habitat value. It adopts the USFWS definition of a wetland which utilizes hydric soils, saturation or inundation, and vegetable criteria, and requires the presence of at least one of these criteria (rather than all three) in order to classify an area as a wetland. This policy is not a regulatory program and should be included as a TBC.