



DEPARTMENT OF FISH AND GAME

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(916) 327-3196

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ALAMEDA POINT
SSIC NO. 5090.3.A

August 2, 2000

Mr. Rick Weissenborn
Department of the Navy
Engineering Field Division, Southwest
1230 Columbia Street
Suite 1100
San Diego, CA 92101

Subject: Review of Draft Unexploded Ordnance Intrusive Investigation Implementation Work Plan for Operable Unit (OU) 3 and Operable Unit (OU) 4 for Alameda Point, Alameda, California, Dated May 31, 2000

Dear Mr. Weissenborn:

The Department of Fish and Game has reviewed the Draft Unexploded Ordnance Intrusive Investigation Implementation Work Plan for Sites 1 and 2 at Alameda Point, prepared for the Navy by Roy F. Weston, Inc. These comments are provided as part of our role as natural resource trustee for the State's fish and wildlife and their habitats. They are limited to addressing compliance with Department of Fish and Game (DFG) Applicable or Relevant and Appropriate Requirements (ARARs) and providing contact information to help the Navy contractors identify sensitive resources and mitigate for any potential disturbance during the intrusive investigation.

Background

Alameda Point is on Alameda Island, at the western end of the city of Alameda in Alameda County, and along the eastern side of San Francisco Bay. The intent of the intrusive investigation is to locate, remove and dispose of all ordnance and ordnance related materials at Installation Restoration (IR) Site 1 and IR Site 2 that are located in OU and OU4. In addition, low-level radioactive material encountered during the investigation will also be removed.

Specific Comments

Section 3.3 Ecological Concerns

This Section should identify the agencies that will be notified prior to work near sensitive natural resources. As a natural resource trustee, the Department of Fish and Game should be included on the contact list and should be notified for any work occurring between April 15 and August 1. The primary DFG contact is Janice Gann. She can be reached at (209) 835-6910. If she is unavailable, please call me at (916) 327-3196.

Section 15.1 Location-specific ARARs

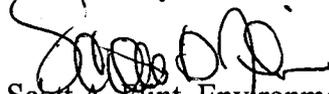
This section does not identify all Department of Fish and Game ARARs that apply to this site. Please include all ARARs on the enclosed table. Additional ARARs are the California Endangered Species Act, the Migratory Bird Treaty Act and Fish and Game Code 3005. Specific citations and explanations can be found on the table. In addition, California Department of Fish and Game biologists should be included in the development of mitigation measures at this site. Again, please call Janice Gann with questions regarding appropriate mitigation measures.

Thank you for the opportunity to provide comments for this Intrusive Investigation Work Plan. If you have any questions regarding this review, please contact me at (916) 327-3196.



Susan R. Ellis, Environmental Specialist IV
Military Facilities Team
Office of Spill Prevention and Response

Reviewed by:



Scott A. Flint, Environmental Specialist IV
Military Facilities Team
Office of Spill Prevention and Response

Enclosure: 2 pages

Mr. Rick Weissenborn

August 2, 2000

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cc:

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Janice Gann, Region 3
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**CALIFORNIA DEPARTMENT OF FISH AND GAME - LOCATION AND SPECIFIC ARARs AND TBCs
UNEXPLODED ORDNANCE INTRUSIVE INVESTIGATION ALAMEDA POINT, SITES 1 & 2**

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 that are deleterious to State fish, plants, or birds.</p>
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.

**CALIFORNIA DEPARTMENT OF FISH AND GAME - LOCATION AND SPECIFIC ARARs AND TBCs
UNEXPLODED ORDNANCE INTRUSIVE INVESTIGATION ALAMEDA POINT, SITES 1 & 2**

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 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.
Migratory Birds	Migratory nongame birds (or parts thereof) as designated in the Migratory Bird Treaty Act may not be taken or possessed.	Fish & Game Code section 3513	This section should be included as an ARAR. It prohibits the take or possession of migratory nongame birds (or parts thereof) except as provided by rules and regulations adopted by the Secretary of Interior. The extensive list of migratory birds protected under the Migratory Bird Treaty Act is found at 50 C.F.R Section 10.13.
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. This section should be included as an ARAR.