APPENDIX C
ENVIRONMENTAL LAWS AND REGULATIONS CONSIDERED

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The following Federal environmental laws and regulations were reviewed to assist in determining the significance of environmental impacts under the National Environmental Policy Act (NEPA).

GENERAL

NEPA (42 USC 4321 et seq.) is the basic U.S. charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. NEPA is a procedural statute, requiring that federal agencies consider the environmental effects of their actions when making decisions. NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing the NEPA. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

The Council on Environmental Quality Regulations (40 CFR 1500-1508) provide guidance for implementing the procedural provisions of the NEPA and are binding on federal agencies. Executive Order 11514, Protection and Enhancement of Environmental Quality (as amended by Executive Order 11991), Department of Defense (DOD) Instruction 4715.9, Environmental Planning and Analysis, and Naval Operations Instruction (OPNAVINST) 5090.1B, Environmental and Natural Resources Planning Manual, provide further direction to Federal agencies so they understand how to comply with the procedures and achieve the goals of the NEPA process.

WATER QUALITY

The objective of the Clean Water Act (33 USC 1251 et seq.) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters.

The Clean Water Act prohibits any discharge of pollutants into any public waterway unless authorized by a permit (33 USC 1342, 1343). Under the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit establishes precisely defined requirements for water pollution control.

Under the Clean Water Act, the U.S. Environmental Policy Act (EPA) is the principal permitting and enforcement agency for NPDES permits. This authority may be delegated to the states.

The Clean Water Act requires all branches of the Federal government involved in an activity that may result in a point-source discharge or runoff of pollution to U.S. waters to comply with applicable Federal, interstate, state, and local requirements.

The Rivers and Harbors Appropriation Act of 1899 (33 USC 403 et seq.) regulates the disposal of materials into the rivers and harbors of the United States. Section 10 of the Act prohibits the unauthorized obstruction or alteration of any navigable water of the U.S., and requires a permit from the Army Corps of Engineers for the construction of any structure or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters.

MARINE BIOLOGICAL RESOURCES

The Endangered Species Act (16 USC 1531 et seq.) declares that it is the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species. Further, the Act directs Federal agencies to use their authorities in furtherance of the purposes of the Act.

Under the Endangered Species Act, the Secretary of the Interior creates lists of endangered and threatened species. The term endangered species means any species which is in danger of extinction throughout all or a significant portion of its range. The Act defines a threatened species as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

A key provision of the Endangered Species Act for Federal activities is Section 7 consultation. Under Section 7 of the Act, every Federal agency must consult with the Secretary of the Interior, U.S. Fish and Wildlife Service (USFWS), to ensure that any agency action (authorization, funding, or execution) is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species.

Through the Fish and Wildlife Conservation Act (16 USC 2901 et seq.), Congress encourages all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and promote conservation of nongame fish and wildlife and their habitats. Further, the Act encourages each state to develop a conservation plan.

The Fish and Wildlife Coordination Act (16 USC 661 et seq.) requires a Federal department or agency that proposes or authorizes the modification, control, or impoundment of the waters of any stream or body of water (greater than 10 acres [4.1 hectares]), including wetlands, to first consult with the USFWS. Any such project must make adequate provision for the conservation, maintenance, and management of wildlife resources. The Act requires a Federal agency to give full consideration to the recommendations of the USFWS and to any recommendations of a state agency on the wildlife aspects of a project.

The Migratory Bird Treaty Act (16 USC 703-712) protects many species of migratory birds. Specifically, the Act prohibits the pursuit, hunting, taking, capture, possession, or killing of such species or their nests and eggs. The Act further requires that any affected Federal agency or department must consult with the USFWS to evaluate ways to avoid or minimize adverse effects on migratory birds.

The Marine Mammal Protection Act (16 USC 1361 et seq.) establishes a moratorium on the taking and importation of marine mammals and marine mammal products. The Marine Mammal Commission, which was established under the Act, reviews laws and international conventions, studies world-wide populations, and makes recommendations to Federal officials concerning marine mammals.

The National Marine Sanctuaries Act (16 USC 1431 et seq.), which is Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, seeks to enhance both public awareness and conservation of the marine environment. The purposes and policies of the Act are to identify areas of national significance, to provide coordinated management of these marine areas, to support scientific research of these areas, to enhance public awareness of the marine environment, and to facilitate public use of marine resources when not in conflict with the other policies.

The Ocean Dumping Act (33 USC 1401 et seq.), which is Title I of the Marine Protection, Research, and Sanctuaries Act, governs the disposal of all materials into the ocean, including sewage sludge, industrial waste, and dredged materials. Amendments in 1980 also prohibited the ocean dumping of radiological, chemical, or biological warfare agents or high-level radioactive wastes. Further amendments in 1983 prohibited the issuance of permits authorizing the ocean dumping of any low-level radioactive wastes or radioactive waste materials, unless certain requirements were met.

HEALTH AND SAFETY

The purpose of the Occupational Safety and Health Act (29 USC 651 et seq.) is to assure, so far as possible, every working man and woman in the nation safe and healthful working conditions and to preserve human resources. Regulations implementing the Act are found at 29 CFR, Parts 1900-1990.

The Act further provides that each Federal agency has the responsibility to establish and maintain an effective and comprehensive occupational safety and health program that is consistent with national standards. Each agency must:

- Provide safe and healthful conditions and places of employment
- Acquire, maintain, and require use of safety equipment
- Keep records of occupational accidents and illnesses
- Report annually to the Secretary of Labor

Finally, Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (29 USC Section 655 note) requires the Occupational Safety and Health Administration to issue regulations specifically designed to protect workers engaged in hazardous waste operations. The hazardous waste rules include requirements for hazard communication, medical surveillance, health and safety programs, air monitoring, decontamination, and training.

HAZARDOUS MATERIALS AND HAZARDOUS WASTES

Under the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 et seq.), Congress declares the national policy of the United States to be, whenever feasible, the reduction or elimination, as expeditiously as possible, of hazardous waste. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

The RCRA defines waste as hazardous through four characteristics: ignitability, corrosivity, reactivity, or toxicity. Once defined as a hazardous waste, the RCRA established a comprehensive cradle-to-grave program to regulate hazardous waste from generation through proper disposal or destruction.

The RCRA also establishes a specific permit program for the treatment, storage, and disposal of hazardous waste. Both interim status and final status permit programs exist.

The RCRA defines solid waste as any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities. To regulate solid waste, the RCRA provides for the development of state plans for waste disposal and resource recovery. The RCRA encourages and affords assistance for solid waste disposal methods that are environmentally sound, maximize the utilization of valuable resources, and encourage resource conservation. The RCRA also regulates mixed wastes. A mixed waste contains both a hazardous waste and radioactive component.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC 9601 et seq.)-commonly known as Superfund-provides for funding, cleanup, enforcement authority, and emergency response procedures for releases of hazardous substances into the environment.

The CERCLA covers the cleanup of toxic releases at uncontrolled or abandoned hazardous waste sites. By comparison, the principal objective of the RCRA is to regulate active hazardous waste storage, treatment, and disposal sites to avoid new Superfund sites. The RCRA seeks to prevent hazardous releases; a release triggers the CERCLA.

The goal of the CERCLA-mandated program (Superfund) is to clean up sites where releases have occurred or may occur. A trust fund supported, in part, by a tax on petroleum and

chemicals supports the Superfund. The Superfund allows the Government to take action now and seek reimbursement later.

The CERCLA also mandates spill-reporting requirements. The Act requires immediate reporting of a release of a hazardous substance (other than a Federally permitted release) if the release is greater than or equal to the reportable quantity for that substance.

Title III of the Superfund Amendments and Reauthorization Act (SARA) (42 USC 9601 et seq.) is a freestanding legislative program known as the Emergency Planning and Community Right to Know Act (EPCRA) (42 USC 11001 et seq.). The Act requires immediate notice for accidental releases of hazardous substances and extremely hazardous substances; provision of information to local emergency planning committees for the development of emergency plans; and availability of Material Safety Data Sheets, emergency and hazardous chemical inventory forms, and toxic release forms.

The EPCRA requires each state to designate a state emergency response commission. In turn, the state must designate emergency planning districts and local emergency planning commissions. The primary responsibility for emergency planning is at the local level.

The Pollution Prevention Act of 1990 (42 USC 13101 et seq.) established that pollution should be prevented at the source, recycled or treated in an environmentally safe manner, and disposed of or otherwise released only as a last resort. Executive Order 12856, "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements," commits Federal agency planning, management, and acquisition to the Pollution Prevention Act of 1990. It also requires all Federal facilities to comply with the EPCRA, develop a written pollution prevention strategy emphasizing source reduction, and develop voluntary goals to reduce total releases and off-site transfers of Toxic Release Inventory toxic chemicals by 50 percent by 1999.

The Toxic Substances Control Act (TSCA) (15 USC 2601 et seq.) authorizes the administrator of the EPA broad authority to regulate chemical substances and mixtures which may present an unreasonable risk of injury to human health or the environment.

Under the TSCA the EPA may regulate a chemical when the administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture poses or will pose an unreasonable risk of injury to health or the environment.

Under the TSCA the EPA administrator, upon a finding of unreasonable risk, has a number of regulatory options or controls. The EPA's authority includes total or partial bans on production, content restrictions, operational constraints, product warning statements, instructions, disposal limits, public notice requirements, and monitoring and testing obligations.

The TSCA Chemical Substance Inventory is a database providing support for assessing human health and environmental risks posed by chemical substances. As such, the inventory is not a list of toxic chemicals. Toxicity is not a criterion used in determining the eligibility of a chemical substance for inclusion on the inventory.

AIRSPACE

The Federal Aviation Act of 1958 gives the Federal Aviation Administration (FAA) sole responsibility for the safe and efficient management of all airspace within the continental United States, a responsibility that must be executed in a manner that meets the needs of all airspace users, both civil and military. The FAA's policy on airspace is implemented by FAA Order 1000.1A and is stated in FAA Handbook 7400.2C, Procedures for Handling Airspace Matters, as follows:

> The navigable airspace is a limited national resource, the use of which Congress has charged the FAA to administer in the public interest as necessary to insure the safety of aircraft and the efficient utilization of such airspace. Full consideration shall be given to the requirements of national defense and of commercial and general aviation and to the public right of freedom or transit through the airspace. Accordingly, while a sincere effort shall be made to negotiate equitable solutions to conflicts over its use for non-aviation purposes, preservation of the navigable airspace for aviation must receive primary emphasis. (FAA Order 7400.2C CHG 4 Section 1006, 1991)

The FAA regulates military operations in the National Airspace System through the implementation of FAA Handbook 7400.2 and FAA Handbook 7610.4G, Special Military Operations. The latter was jointly developed by the Department of Defense (DOD) and FAA to establish policy, criteria, and specific procedures for air traffic control planning, coordination, and services during defense activities and special military operations.

Part 7 of FAA Handbook 7400.2 contains the policy, procedures, and criteria for the assignment, review, modification, and revocation of special use airspace. Special use airspace, including prohibited areas, restricted areas, military operations areas, alert areas, and controlled firing areas, is airspace of defined dimensions wherein activities must be confined because of their nature, or wherein limitation may be imposed upon aircraft operations that are not a part of those activities, or both (FAA Order 7400.2C CHG 4, 1991).

DOD policy on the management of special use airspace is essentially an extension of FAA policy, with additional provisions for planning, coordinating, managing, and controlling those areas set aside for military use. Airspace policy issues or interservice problems that must be addressed at the DOD level are handled by the DOD Policy Board on Federal Aviation, a committee composed of senior representatives from each service. However, airspace action within the DOD is decentralized, with each service having its own central office to set policy and oversee airspace matters.

Executive Order 10854 extends the responsibility of the FAA to the overlying airspace of those areas of land or water outside the jurisdiction of the United States. Under this order, airspace actions must be consistent with the requirements of national defense, must not be in conflict with any international treaties or agreements made by the United States, nor be inconsistent with the successful conduct of the foreign relations of the United States. Accordingly, actions concerning airspace beyond U.S. jurisdiction (12 miles [19 kilometers]) require coordination with the DOD and State Department, both of which have preemptive authority over the FAA (FAA Order 7400.2C, CHG 4, Section 1009, 1991).

Part 7 of FAA Handbook 7400.2 contains the policy, procedures, and criteria for the assignment, review, modification, and revocation of special use airspace overlying water, namely, warning areas. A warning area is airspace of defined dimensions over international waters that contains activity which may be hazardous to nonparticipating aircraft. Because international agreements do not provide for prohibition of flight in international airspace, no restriction of flight is imposed. The term "warning area" is synonymous with the International Civil Aviation Organization term "danger area" (FAA Order 7400.2C CHG 4, Section 7400, 1991).

Navy OPNAV Instruction 3770.2H, Airspace Procedures Manual (1994), prescribes the Navy's airspace management procedures and delineates responsibilities for airspace planning and administration.

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