DEPARTMENT OF THE NAVY
BASE REALIGNMENT AND CLOSURE
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February 9, 2007

Mr. Milford Wayne Donaldson
State Historic Preservation Officer
1416 9th Street, Room 1442-7
Sacramento, CA 95814

Dear Mr. Donaldson:

The purpose of this letter is to request your continued participation in the Navy's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. Sections 9601, et seq) Non-Time Critical Removal Action, which has the potential to adversely affect historic properties at NASA Ames Research Center, Moffett Field, California.

Background

In response to the identification of Hangar 1 at Moffett Field as the source of contaminants that present a threat to human health and the environment, the Navy prepared an Engineering Evaluation/Cost Analysis (EE/CA) to identify possible alternatives to remove the source of contamination, to provide an estimate of costs for different source removal alternatives, and to recommend a preferred alternative. In response to public comments received and new cost information, the Navy has initiated a revision of the EE/CA that will undergo further public and regulatory review. The revised EE/CA is scheduled for public release in late summer 2007. As indicated below, the Navy has included the State Office of Historic Preservation (OHP) in the CERCLA process evaluating the long-term solutions to the contamination emanating from Hangar 1 while meeting the substantive requirements of the National Historic Preservation Act (NHPA).

- **28 April 2005:** *Navy meeting with OHP representatives to discuss Hangar 1.*
- **23 May 2005:** *OHP attendance at Hangar 1 Stakeholders Meeting.*
- **8 June 2005:** *OHP attendance at Hangar 1 Stakeholders Meeting.*
- **17 August 2005:** *OHP attendance at Hangar 1 Stakeholders Meeting.*
- **19 October 2005:** *Navy meeting with OHP representatives to discuss Hangar 1.*
- **3 April 2006:** *Navy distributed an advanced copy of the Engineering Evaluation/Cost Analysis for Installation Restoration Site 29, Hangar 1 for the former Naval Air Station Moffett Field, Santa Clara County, California (EE/CA) to OHP for a 21 day review and comment period.*
- **5 May 2006:** *Navy distributed a copy of the EE/CA to OHP for a 30 day public review and comment period.*
- **23 May 2006:** *OHP attendance at Hangar 1 Open House and Public Meeting.*
- **28 August 2006:** *Conference call with OHP regarding NHPA requirements.*

Custody and Control of Property and NRHP Eligibility

In 1994, the National Aeronautics and Space Administration (NASA) Ames Research Center acquired custody and control of the federal property at Moffett Field, California from the Navy. The property included the Shenandoah Plaza National Historic District. This district is listed on

the National Register of Historic Places (NRHP) as the "U.S. Naval Air Station, Sunnyvale". Hangar 1 is a contributing element to the historic district and is individually eligible for the NRHP under Criteria A and C for its association with a significant episode in the development of Naval aviation prior to WWII and as an example of early twentieth-century military planning, engineering, and construction in the Streamline Moderne style.

Substantive Compliance with the National Historic Preservation Act under CERCLA

The CERCLA statutory and regulatory framework requires the Navy to comply with the NHPA as an "applicable or relevant and appropriate requirement" (ARAR) because the cleanup action on Hangar 1 is being conducted in a location where cultural resources have been identified. This requirement to comply with ARARs is established by CERCLA (42 U.S.C. Section 121(d)), which specifies that on-site CERCLA response actions must comply with substantive federal standards, requirements, criteria, limitations, or more stringent state standards, determined to be legally applicable or relevant and appropriate to the circumstances at a given site.

It is critical to note that CERCLA does not require compliance with the administrative requirements of other laws. To facilitate the expeditious implementation of cleanup actions, Congress explicitly limited the scope of the obligation to attain administrative requirements through CERCLA (42 U.S.C. Section 121(e)), which states that no federal, state, or local permits are required for on-site response actions. This provision of CERCLA (Section 121(e)) is interpreted by the Defense Department and the U.S. Environmental Protection Agency (U.S. EPA) to broadly cover all administrative provisions of other laws, such as record keeping, consultation, and reporting requirements. Accordingly, CERCLA requires compliance with only the substantive elements of other laws, such as chemical concentration limits, monitoring requirements, or design and operating standards, while administrative requirements generally apply only to offsite activities, such as off-site transportation and disposal of hazardous substances.

Some additional illumination of the concept of substantive compliance with NHPA in the context of a CERCLA response action is provided by guidance published by the U.S. EPA's Office of Solid Waste and Emergency Response (OSWER). While OSWER guidance is not controlling for Defense Department cleanup operations under CERCLA, OSWER guidance documents are nonetheless generally instructive inasmuch as our Navy cleanup program must follow similar protocols under the statutory and regulatory framework. The relevant OSWER guidance document is the "CERCLA Compliance with Other Laws Manual, Part II" which is available at http://www.epa.gov/superfund/action/guidance/remedy/arars/overview.htm.

Chapter 4 of this OSWER guidance document addresses compliance with resource protection statutes. With respect to the NHPA consultation requirements, the guidance states: "Although administrative and procedural requirements are not ARARs for on-site activities, adherence to these steps is strongly recommended for cleanup actions that take place entirely on site because of the effectiveness of these procedures in identifying cultural resources and the expertise of the State Historic Preservation Officer (SHPO) and Advisory Council on Historic

Preservation (ACHP) in these matters." Accordingly, while the administrative aspects of consultation under the NHPA need not be strictly followed by the Navy in the implementation of the CERCLA response action for Hangar 1, the Navy actively seeks input from OHP and ACHP because of the expertise of SHPO and ACHP, and has endeavored to closely integrate cultural resource consultation into the CERCLA process by addressing the substantive criteria of the 36 CFR Part 800 regulations, and by involving OHP and ACHP in development of our CERCLA documentation. This approach of integrating consideration of cultural resource issues into the CERCLA decision making process is consistent with the requirements of the NHPA regulations.

Participation

The Navy is seeking to continue the involvement of the SHPO, ACHP, and other interested parties within our CERCLA decision-making process through continued stakeholders meetings and review and comment on the revised EE/CA.

The CERCLA decision-making process provides ample and reasonable opportunity for OHP and ACHP to consult and comment on the Navy's CERCLA action. Taking into consideration the requirements of CERCLA, we believe the best course of action is the integrated approach, in that it is ultimately less time consuming and avoids the complications and uncertainties of conducting two separate processes in parallel (e.g. formal Section 106 consultation process and CERCLA removal action selection).

The Navy will continue to include the OHP and the ACHP in the development and implementation of actions required at Hangar 1 by direct contact and the distribution of future Hangar 1 documents for comments, such as the revised EE/CA. I recommend that we meet to further discuss this project and to present the Navy's project schedule within the next three weeks. If you have any questions or would like to schedule a meeting, please contact Mr. Richard Weissenborn at (619) 532-0952.

Sincerely,

JOHN M. HILL, PE
Base Closure Manager
By direction of the Director

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