

Table 1  
Potential Applicable or Relevant and Appropriate Requirements (ARARs)

Source or Authority	Requirement, Standard, or Criterion	Type	Description	Remarks
<b>Federal ARARs</b>				
Endangered Species Act (16 U.S.C. §§ 1531-1543)	16 U.S.C. § 1536 (a) and (c); 16 U.S.C. § 1538 (a)(1)	Applicable <sup>1,2,3</sup> / Location	Federal agencies are required under Section 7 of the ESA to ensure that their actions do not jeopardize the continued existence of a listed species or result in destruction of or adverse modification of its critical habitat (16 U.S.C. § 1536). If the proposed action may affect the listed species or its critical habitat, consultation with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Game (CDFG) may be required (50 CFR § 402.14). Additionally, Section 9 of the ESA prohibits the illegal taking of a listed species (16 U.S.C. § 1538(a)(1)).	Endangered plant and animal species and critical habitats occur at the former Fort Ord. Each reuse area will be screened for potential impacts to any endangered species identified in the Installation-Wide Multispecies Habitat Management Plan (HMP; USACE 1997) and additional requirements identified in subsequent documents (USFWS 1999, 2002, and 2005; and Zander 2002). The provisions of the HMP and referenced additional requirements satisfy the requirements of the ESA.
Migratory Bird Treaty Act (MBTA)	16 U.S.C. §§ 703-712	Applicable <sup>1,2,3</sup> / Location	The statute sections prohibit the taking, possession of, buying, selling, purchasing, or bartering of any migratory bird, including feathers or other parts, nest eggs, or products, except as allowed by regulations.	The requirement includes specific standards of control.
Hazardous Materials & Transportation Act	49 CFR Part 172.101	Applicable <sup>3</sup> / Chemical and Action	These regulations impose procedures and controls on the transportation of hazardous materials.	The regulations include specific standards of control and substantive requirements, criteria, and limitations that may apply to the transport of detonation materials and selected recyclable ordnance materials.
Federal Resource Conservation and Recovery Act (RCRA), Subpart M (Military Munitions Rule [“the Military Munitions Rule”])	40 CFR Parts 266 and 270	Relevant and Appropriate <sup>2,3</sup> / Chemical and Action	The regulations identify when military munitions on active ranges become subject to the regulatory definition of “solid waste,” for purposes of RCRA Subtitle C and, if these wastes are hazardous, the management standards that apply.	Portions of the Military Munitions Rule may be relevant and appropriate, but those provisions of the Rule that exclude military munitions from RCRA Subtitle C regulations are not appropriate to the remediation of a closed range. The relevant portions relate to the management of MEC, which is recovered, including characterization as hazardous waste and requirements for treatment, storage, and transportation. The Rule provides for the storage and transportation of recovered military munitions in accordance with Department of Defense Explosives Safety Board (DDESB) standards.
<b>State of California ARARs</b>				
California Endangered Species Act	Fish and Game Code §§ 2051 et seq. and §2080	Relevant and Appropriate <sup>1,2,3</sup> / Location	The statute sections provide a declaration of policy and definitions. Section 2080 provides that no person shall take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts.	Section 2080 includes specific standards of control with respect to the taking of endangered or threatened species. Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the ESCA RP Team is not required to comply with non-substantive, procedural, and administrative provisions of § 2051.
California Fish and Game Code	§ 3511	Relevant and Appropriate <sup>1,2,3</sup> / Location	This statute section prohibits taking or possessing fully protected birds or parts thereof, listed as: (a) American peregrine falcon ( <i>Falco peregrinus anatum</i> ); (b) Brown pelican; (c) California black rail ( <i>Laterallus jamaicensis coturniculus</i> ); (d) California clapper rail ( <i>Rallus longirostris obsoletus</i> ); (e) California condor ( <i>Gymnogyps californianus</i> ); (f) California least tern ( <i>Sterna albifrons browni</i> ); (g) Golden eagle; (h) Greater sandhill crane ( <i>Grus canadensis tabida</i> ); (i) Light-footed clapper rail ( <i>Rallus longirostris levipes</i> ); (j) Southern bald eagle ( <i>Haliaeetus leucocephalus leucocephalus</i> ); (k) Trumpeter swan ( <i>Cygnus buccinator</i> ); (l) White-tailed kite ( <i>Elanus leucurus</i> ); and (m) Yuma clapper rail ( <i>Rallus longirostris yumanensis</i> ).	The requirement includes specific standards of control that may apply to the American peregrine falcon (some possibility), golden eagle (slight possibility), brown pelican (not likely but possible), and California least tern (not likely but possible).
California Fish and Game Code	§ 3513	Relevant and Appropriate <sup>1,2,3</sup> / Location	This statute section declares that it is unlawful to take or possess any migratory non-game bird as designated in the MBTA or any part of such migratory non-game bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.	The requirement includes specific standards of control.

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California Fish and Game Code	§ 3503.5	Relevant and Appropriate <sup>1,2,3</sup> / Location	This statute section prohibits the take, possession, or destruction of any birds in the orders of Falconiformes or Strigiformes, or to take, possess, or destroy the nest or eggs of any such bird, except as provided in the code.	The requirement includes specific standards of control that may apply to vultures, hawks, ospreys, falcons, and owls.
California Fish and Game Code	Title 14, CCR § 472	Relevant and Appropriate <sup>1,2,3</sup> / Location	This regulation limits the taking of non-game birds and mammals except for specified species.	The requirement includes specific standards of control that may affect American crows.
California Fish and Game Code	§ 4800 et seq.	Relevant and Appropriate <sup>1,2,3</sup> / Location	This statute section declares that it is unlawful to take, injure, possess, transport, or sell any mountain lion.	The requirement includes specific standards of control.  Due to the size of vegetation clearance and MEC remediation activities that may be selected for implementation, it is unlikely that mountain lions will be negatively affected.
California Fish and Game Code	Title 14, CCR §§ 40-42	Relevant and Appropriate <sup>1,2,3</sup> / Location	These regulations make it unlawful to take, possess, purchase, propagate, sell, transport, import, or export any native reptile or amphibian, unless under special permit.	The requirement includes specific standards of control that may apply to California black legless lizard and coast horned lizard.
California Health and Safety Code, Division 20	Title 22, CCR Division 4.5	Applicable <sup>3</sup> / Chemical and Action	The statute and regulations provide for identification of hazardous waste in §§ 66261. If a material is a hazardous waste, Division 4.5 provisions further regulate hazardous waste generators, transporters, and treatment, storage, and disposal facilities.	The ESCA RP Team will evaluate discovered items in accordance with the approved work plan to determine the presence of energetic materials or other constituents that would cause it to be characterized as a hazardous waste.  Substantive requirements: <ul style="list-style-type: none"> <li>Storage: on-site storage of MEC items occur in a designated bunker that meets the standard of DDESB 6055.9 STD, including security measures such as fences, signs, and an alarm system.</li> <li>Transportation: off-site transportation of materials will incorporate applicable manifesting and placarding requirements. Conforms to Defense Reutilization and Marketing Office (DRMO) instruction.</li> <li>Disposal/recycling: off-site disposal or recycling facility or facilities will be state and/or RCRA-authorized.</li> </ul>
California Health and Safety Code	Title 22, CCR § 66264.601-603	Relevant and Appropriate <sup>2</sup> / Action	These regulations apply to hazardous waste treatment, which is conducted in a device that does not meet the definition of a “container” in 22 CCR § 66260.10 or is characterized as a “Miscellaneous Unit” subject to the provisions of 22 CCR § 66264.601-603. For activities where detonations are in a device that meets the 22 CCR § 66260.10 definition of a container, the requirements for “temporary units,” as set forth in 22 CCR § 66264.553, apply.	The regulations include generally described narrative standards. Compliance with substantive requirements is achieved through regulatory coordination of site-specific work plans in accordance with CERCLA and Federal Facility Agreement.  Under CERCLA, the ESCA RP Team is not required to comply with procedural requirements such as obtaining a permit.

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California Health and Safety Code	Title 22, CCR § 66265.382	Relevant and Appropriate <sup>3</sup> / Chemical and Action	<p>Open burning of hazardous waste is prohibited except for the open burning and detonation (OB/OD) of waste explosives. Waste explosives include waste that has the potential to detonate and bulk military propellants that cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometer/second at sea level). Owners or operators choosing to open burn or detonate waste explosives shall do so in accordance with the following table and in a manner that does not threaten human health or the environment.</p> <table border="1"> <thead> <tr> <th>Pounds Waste Explosives</th> <th>Minimum Distance from OB/OD to property</th> </tr> </thead> <tbody> <tr> <td>0 to 100</td> <td>204 meters (670 feet)</td> </tr> <tr> <td>101 to 1,000</td> <td>380 meters (1,250 feet)</td> </tr> <tr> <td>1,001 to 10,000</td> <td>530 meters (1,730 feet)</td> </tr> <tr> <td>10,001 to 30,000</td> <td>690 meters (2,260 feet)</td> </tr> </tbody> </table>	Pounds Waste Explosives	Minimum Distance from OB/OD to property	0 to 100	204 meters (670 feet)	101 to 1,000	380 meters (1,250 feet)	1,001 to 10,000	530 meters (1,730 feet)	10,001 to 30,000	690 meters (2,260 feet)	The requirement includes specific standards of control and addresses situations similar to those that may be addressed during MEC remediation; detonation of MEC will comply with these requirements.
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0 to 100	204 meters (670 feet)													
101 to 1,000	380 meters (1,250 feet)													
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California Fish and Game Code	§ 1900 et seq.	Relevant and Appropriate <sup>1,2,3</sup> / Action	These statute sections sets forth programmatic and administrative provisions and, in § 1908, provides that no person shall import into the state, or take, possess, or sell within this state, except as incident to the possession or sale of the real property on which the plant is growing, any native plant, or any part or product thereof, that the commission determines to be an endangered native plant or rare native plant.	Although the definition of “person” in the statute does not apply to the ESCA RP Team, the standards of control are relevant and appropriate, and the citation is therefore considered as an ARAR.										
California Fish and Game Code	Title 14, CCR § 783 et seq.	Relevant and Appropriate <sup>1,2,3</sup> / Action	These regulations provide that no person shall import into the State, export out of the State or take, possess, purchase, or sell within the State, any endangered species, threatened species, or part or product thereof, or attempt any of those acts, except as otherwise provided in the California Endangered Species Act, Fish and Game Code Section 2050, et seq., the Native Plant Protection Act, the Natural Community Conservation Planning Act, the California Desert Native Plants Act, or as authorized under this article in an incidental take permits. The regulations also provide programmatic and administrative procedures for incidental take permits.	The section includes specific standards of control with respect to taking rare or endangered plants. Although the definition of “person” in the statute does not apply to the ESCA RP Team, the standards of control are relevant and appropriate, and the citation is therefore considered as an ARAR.										
<b>State of California To-Be-Considered Criteria (TBCs)</b>														
California Fish and Game Commission	Wetlands Resources (pursuant to § 703 of California Fish and Game Code; not a statute)	Policy <sup>1,2,3</sup> / Location	This policy: (1) seeks to provide for the protection, preservation, restoration, enhancement, and expansion of wetland habitat in California; (2) strongly discourages development in or conversion of wetlands; and (3) opposes, consistent with its legal authority, any development or conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission: (1) opposes wetland development proposals unless, at a minimum, project mitigation assures there will be “no net loss” of either wetland habitat values or acreage; and (2) strongly prefers mitigation that would achieve expansion of wetland acreage and enhancement of wetland habitat values.	The policy provides for the protection of wetland resources.										

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Source or Authority	Requirement, Standard, or Criterion	Type	Description	Remarks
<b>Regulations that were considered as Potential ARARs but were not considered applicable</b>				
California Fish and Game Code	§ 3005		The statute section prohibits the taking of birds or mammals, except non-game mammals, with any net, pound, cage, trap, set line, or wire, or poisonous substance. Included in the term “taking” is the killing of birds or mammals by poison.	Birds and mammals will be protected by achieving the identified Remedial Action Objectives (RAOs). Further, the scope of the remedial actions does not include intentional taking of birds and mammals with unlawful devices.
California Fish and Game Code	§ 4000 et seq.		This statute section provides that a fur-bearing mammal may be taken only with a trap, firearm, bow and arrow, poison under a proper permit, or with the use of dogs.	The scope of the remedial actions does not involve intentional taking of fur-bearing mammals with unlawful devices.
California Fish and Game Code	Title 14, CCR § 460		This regulation makes it unlawful to take Fisher, marten, river otter, desert kit fox and red fox.	The remedial actions will not result in the take of Fisher, marten, river otter, desert kit fox, and red fox. The species of red fox protected by the State is located in the Sierra Nevada mountain range. The species of red fox located at the former Fort Ord is an introduced species and is not protected by this section.
California Clean Air Act	Health and Safety Code § 41701		This statute section prohibits the discharge into the atmosphere from any source whatsoever any air contaminant for a period or periods aggregated more than three minutes in any one hour that is dark or darker than No. 2 on the Ringelmann Chart or obscures the view to a degree equal to or greater than smoke.	Agricultural burning for which a permit has been granted pursuant to Article 3 (commencing with § 41850, emission limitations for agricultural burning) are exempt from this requirement per § 41704(b). Any prescribed burns that would be conducted for vegetation removal prior to MEC remediation will be conducted under Monterey Bay Unified Air Pollution Control District Rule 407, which implements the requirements of Article 3 (California Health and Safety Code § 41850 et seq.). The exemption applies although the ESCA RP Team is not required to obtain a permit under CERCLA.

**Notes:**

1. Vegetation Clearance
2. MEC Remediation
3. Detonation of MEC

Table 2  
Project Schedule Milestones and Anticipated Completion Dates

MRA Group	Draft Document Name	Submittal Date	AOC Requirement
<b>Group 1 (Seaside MRA and Parker Flats MRA Phase II)</b>	Draft Remedial Investigation / Feasibility Study Work Plan (RI/FS WP)	<b>28-May-08</b>	Due within 60 days of approval of SEDR
	<i>Remedial Investigation Fieldwork</i>	<i>Oct-08 through Jun-09</i>	<i>Not Applicable</i>
	Draft Remedial Investigation / Feasibility Study Report (RI/FS Report)	31-Jul-09 *	RI Report due 180 days after completion of RI fieldwork.  FS Report due 120 days after the approval of RI Report.
	* Proposed milestone target date based on scheduled completion of RI/FS Report within 60 days of completion of remedial investigation fieldwork.		
	<i>Draft Proposed Plan (PP)</i>	<i>21-Jan-10</i>	<i>Not Applicable</i>
	<i>Draft Record of Decision (ROD)</i>	<i>22-Jun-10</i>	<i>Not Applicable</i>
	Draft Institutional Controls Implementation Plan (IC Plan) <sup>1</sup>	04-Jan-11	Due 90 days after signature of the ROD
	Draft Operations and Maintenance Plan (O&M Plan) <sup>1</sup>	04-Jan-11	Due 90 days after signature of ROD
	Pre-certification Inspection <sup>2</sup>	TBD	Due within 90 days after Respondent concludes that the Remedial Action has been fully performed and the Performance Standards have been attained.
	Draft Remedial Action Completion Report (RACR) <sup>2</sup>	TBD	Due within 30 days after the pre-certification inspection, if appropriate.

Notes: <sup>1</sup> Schedule dependent upon approval of ROD.

<sup>2</sup> If NFA ROD is approved, the Pre-certification Inspection and RACR will not be required.

AOC = Administrative Order on Consent

TBD = To be determined

**Bold** = 2008 milestone schedule

Non-Bold – Target dates for out years

*Italics* = Not a required compliance milestone under the AOC