

**APPENDIX F: USACE LEDPA CONCURRENCE LETTER, MARCH 20, 2020
AND USEPA LEDPA CONCURRENCE LETTER, MARCH 18, 2020**



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

March 20, 2020

Regulatory Division (SPK-2009-01484)

Mark McLoughlin
California High Speed Rail Authority
770 L Street, Suite 800
Sacramento, California 95814
Mark.McLoughlin@hsr.ca.gov

Dear Mr. McLoughlin:

I am writing in response to your February 4, 2020, Checkpoint C Package for the proposed San Jose to Merced Section of the California High-Speed Rail (CAHSR) Project, in accordance with our *National Environmental Policy Act/Clean Water Act Section 404/Rivers and Harbors Act Section 14 Integration Process for the California High-Speed Train Program Memorandum of Understanding* dated November 2010 (NEPA/404/408 MOU). This letter is the U.S. Army Corps of Engineers' formal response.

As a cooperating agency for preparation of the San Jose to Merced Project Section Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and in fulfillment of our responsibilities under the NEPA/404/408 MOU, we offered feedback to the California High-Speed Rail Authority (Authority) on the preliminary Least Environmentally Damaging Practicable Alternative (LEDPA) determination and draft Compensatory Mitigation Plan for the San Jose to Merced Section of the CAHSR Project. The Authority submitted the San Jose to Merced Section Checkpoint C Package to our office on February 4, 2020. We attended the February 18, 2020 Checkpoint C Meeting and provided comments on the Checkpoint C documents to your staff the same day. Additionally, we provided formal comments on the Checkpoint C Package via email on March 13, 2020.

After reviewing the data provided, we concur that Alternative 4, from Scott Boulevard in the City of Santa Clara to Carlucci Road in unincorporated Merced County, appears to be the preliminary LEDPA. The following are the design options that would be implemented for each of the five subsections of Alternative 4:

| Subsection | Design Option |
|-----------------------------------|--------------------------------------|
| San Jose Diridon Station Approach | Blended, At-Grade |
| Monterey Corridor | Blended, At-Grade |
| Morgan Hill and Gilroy | Blended, At-Grade to Downtown Gilroy |
| Pacheco Pass | Tunnel |
| San Joaquin Valley | Henry Miller Road |

The following are the design options that would be implemented for the specified ancillary features of Alternative 4:

| Ancillary Feature | Design Option |
|-----------------------------|-------------------|
| San Jose Diridon Station | At-Grade |
| Downtown Gilroy Station | At-Grade |
| Maintenance of Way Facility | South of Gilroy D |

Please be aware that this determination is being made prior to the circulation of the public Draft Environmental Impact Statement and will be revisited if additional substantive information becomes available after public comments are received.

In addition, we concur that the draft Compensatory Mitigation Plan may provide sufficient mitigation to meet the needs of the project under Section 404 of the Clean Water Act. However, the Corps cannot make a permit decision until we receive a final mitigation plan in accordance with 33 CFR Part 332, *Compensatory Mitigation for Losses of Aquatic Resources*. We will continue to work with the Authority towards development of a final mitigation plan that satisfies the requirements of 33 CFR Part 332.

We appreciate your willingness to work with this office to reach this concurrence. If you have any questions, please contact Mr. Zachary Fancher at our Enforcement/Special Projects Branch, 1325 J Street, Room 1350, Sacramento, California 95814-2922, by email at Zachary.J.Fancher@usace.army.mil, or by telephone at 916-557-6643.

Sincerely,



Michael S. Jewell
Chief, Regulatory Division

cc:

Mr. Sam Ziegler, U.S. Environmental Protection Agency, Region IX, Ziegler.Sam@epa.gov
Ms. Connell Dunning, U.S. Environmental Protection Agency, Region IX, Dunning.Connell@epa.gov
Mr. Mike Aviña, California High-Speed Rail Authority, mike.avina@hsr.ca.gov
Mr. Dan McKell, California High-Speed Rail Authority, Dan.McKell@hsr.ca.gov
Ms. Marlys A. Osterhues, Federal Railroad Administration, Marlys.Osterhues@dot.gov
Mr. Ryan Larson, U.S. Army Corps of Engineers, Ryan.T.Larson2@usace.army.mil
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

March 18, 2020

Mark McLoughlin
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Subject: San Jose to the Central Valley Wye Project Extent: Checkpoint C Summary Report, Request for Agreement on Preliminary Least Environmentally Damaging Practicable Alternative and Preliminary Compensatory Mitigation Plan

Dear Mr. McLoughlin:

Thank you for the opportunity to provide comments in advance of publication of the Draft Environmental Impact Statement (DEIS) for the San Jose to Merced project section of California High Speed Rail (HSR). This letter responds to your February 4, 2020 request for agreement on the Preliminary Least Environmentally Damaging Practicable Alternative (LEDPA) determination for the proposed Alternative 4, which provides for blended, at-grade service from San Jose to downtown Gilroy, primarily utilizing the existing Caltrain right-of-way in this portion of the project section. We appreciate the clarifications provided on the Checkpoint C materials in response to comments provided by our agency via email on March 13, 2020 and at the Checkpoint C meeting on February 18, 2020.

EPA feedback is aimed at integrating permitting requirements of Clean Water Act (CWA) Section 404 with NEPA requirements. The purpose of this letter is to provide EPA's "agreement" with "Checkpoint C", a step in the integration process described in the *NEPA/ CWA Section 404/Rivers and Harbors Act Section 14 (33 U.S.C. 408) Integration Process for the California High-Speed Train Program Memorandum of Understanding* (NEPA/404 MOU) dated December 2010. To facilitate effective integration of CWA Section 404 and NEPA for this project, EPA continues to coordinate closely with your agency and the U.S. Army Corps of Engineers (Corps).

Least Environmentally Damaging Practicable Alternative (LEDPA)

After reviewing the information provided in the Checkpoint C Summary Report, and per the NEPA/404 MOU, EPA provides agreement with CHSRA's determination that Alternative 4 is the preliminary LEDPA for the San Jose to Central Valley Wye Project Extent of HSR. As this determination has been made prior to public circulation of the DEIS, it will be revisited if necessary should additional information become available after public comments are received.

Draft Compensatory Mitigation Plan

The Draft Compensatory Mitigation Plan is a conceptual strategy specifying resources available for the establishment and/or rehabilitation of aquatic resources. The submitted Checkpoint C Summary Report provides a general overview of mitigation needs, opportunities, and plausible implementation scenarios. According to the submittal, Alternative 4 will result in permanent impacts to 56.2 acres of wetlands and 40.2

acres of other waters of the United States (WOUS). Of that, 22.1 acres consist of constructed waters (irrigation canals, ditches, and constructed basins) that will be replaced on-site in coordination with the landowner or operator of the facility. Most of these features will be replaced in-kind, in the same location or immediately adjacent to the project footprint, with functions of the existing constructed features being retained. Temporary impacts to any WOUS will also be mitigated on site and in kind whenever practical. Off-site mitigation is proposed for all other permanent, direct impacts on jurisdictional waters, totaling approximately 74.3 acres of impact. The submittal presents a preliminary determination that compensation for these unavoidable impacts on jurisdictional waters can likely be completed through a combination of approved mitigation bank credits, available credits from the NFWF ILF Program, and permittee responsible mitigation.

Per the NEPA/404 MOU, EPA provides agreement that the Draft Compensatory Mitigation Plan may provide sufficient mitigation to meet the needs of the project under Section 404 of the Clean Water Act. EPA expects that more site-specific information will be made available prior to Clean Water Act Section 404 permitting. Specifically, the Final Mitigation Plan should include information on all key elements of the mitigation rule (Subpart J of the 404(b)(1) Guidelines at 40 CFR Part 230) in order to ensure compliance. EPA looks forward to collaborating with your agencies and Corps staff in the use of the program technical procedures to implement a watershed approach to mitigation. Required compensatory mitigation will be determined through completion of the Corps SPD Mitigation Ratio Setting Checklist. Permitted impacts to WOUS will be confirmed during project construction. We understand that impacts will likely be refined and reduced as design advances, and we recommend that all possible measures be taken to reduce impact numbers through further avoidance and minimization measures. We are particularly concerned about the estimated 27.1 acres of impact to Alkali Vernal Pools, as impacts to these rare aquatic features are incredibly difficult to mitigate due to their unique soil and hydrology requirements. If impacts to waters of the U.S. are reduced as a result of changes in project design, adjustments to the amount of compensatory mitigation will be made accordingly.

Thank you for requesting EPA's agreement on the LEDPA and Draft Compensatory Mitigation Plan. We look forward to further participation in the development of environmental documents for this project. EPA will ultimately review EISs for each section of the California HSR system pursuant to NEPA, Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. EPA will also review CWA Section 404 permit applications for each HSR section for compliance with EPA's 404(b)(1) Guidelines (40 CFR 230.10). We appreciate this opportunity to address potential environmental issues as early as possible. If you have any questions regarding our comments please contact the NEPA lead for this project, Clifton Meek, at (415) 972-3370 or by email at meek.clifton@epa.gov.

Sincerely,

Connell Dunning, Transportation Team Lead
Environmental Review Branch
Tribal, Intergovernmental & Policy Division

CC Via Email:

Mike Aviña, California High Speed Rail Authority
Dan McKell, California High Speed Rail Authority
Zachary Fancher, U.S. Army Corps of Engineers