

**APPENDIX F: U.S. ARMY CORPS OF ENGINEERS LEDPA
CONCURRENCE LETTER, JUNE 29, 2020, AND U.S. ENVIRONMENTAL
PROTECTION AGENCY LEDPA CONCURRENCE LETTER, JUNE 26,
2020**



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

June 29, 2020

Regulatory Division

SUBJECT: File Number SPN-2010-00158

Mr. Mark McLoughlin
Director of Environmental Services
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 May 13, 2020, Checkpoint C Package for the proposed San Francisco to San Jose Project 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 December 2010 (NEPA/404/408 MOU). This letter serves as the U.S. Army Corps of Engineers' (Corps) formal response.

As an official cooperating agency for preparation of the San Francisco to San Jose Project Section Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and in fulfillment of our responsibilities under the NEPA/404/408 MOU, the Corps offered feedback to the California High-Speed Rail Authority (Authority) on the preliminary Least Environmentally Damaging Practicable Alternative (LEDPA) determination and Preliminary Compensatory Mitigation Plan for the San Francisco to San Jose Project Section of the CAHSR Project. The Authority submitted the San Francisco to San Jose Project Section Checkpoint C Package to our office electronically using the CAHSR SharePoint site on May 13, 2020. We attended the May 26, 2020, Checkpoint C Meeting and provided comments on the Checkpoint C documents via email on June 24, 2020.

After reviewing the data provided, we concur that Alternative A, which in summary would modify approximately 14.5 miles of existing Caltrain track, predominantly within the existing Caltrain right-of-way, build the East Brisbane light maintenance facility, modify seven existing stations or platforms to accommodate high-speed rail, and install safety improvements and communication radio towers, appears to be the preliminary LEDPA.

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

In addition, we concur that the Preliminary Compensatory Mitigation Plan may provide a sufficient framework for 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*, and regional guidance. We will continue to work with the Authority towards development of a final mitigation plan that satisfies the requirements of 33 CFR Part 332, and regional guidance.

You may refer any questions on this matter to Bryan Matsumoto of my Regulatory staff by telephone at 415-503-6786 or by e-mail at Bryan.T.Matsumoto@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

Sincerely,

James C. Mazza
Chief, Regulatory Division

Copies Furnished:

Federal Railroad Administration, Stephanie Perez, stephanie.perez@dot.gov
US EPA, Carolyn Mulvihill, Mulvihill.Carolyn@epa.gov
CA HSRA, Sue Meyer, Sue.Meyer@hsr.ca.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

June 26, 2020

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

Subject: Checkpoint C Package for the San Francisco to San Jose Section - Request for Agreement on Preliminary Least Environmentally Damaging Practicable Alternative and Preliminary Compensatory Mitigation Plan

Dear Mr. McLoughlin:

Thank you for the opportunity to review the Checkpoint C Package for the San Francisco to San Jose section of California High Speed Rail. This letter responds to your May 13, 2020 request for agreement on the Preliminary Least Environmentally Damaging Practicable Alternative determination for the proposed Alternative A, which would modify approximately 14.5 miles of existing Caltrain track, predominantly within the existing Caltrain right-of-way, build the East Brisbane Light Maintenance Facility, modify seven existing stations or platforms to accommodate the HSR, and install safety improvements and communication radio towers.

Feedback from the EPA is aimed at integrating permitting requirements of Clean Water Act Section 404 with NEPA requirements. The purpose of this letter is to provide the 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* dated December 2010. To facilitate effective integration of the CWA Section 404 and NEPA for this project, the EPA continues to coordinate closely with your agency and the U.S. Army Corps of Engineers.

Least Environmentally Damaging Practicable Alternative

After reviewing the information provided in the Checkpoint C package, and per the NEPA/404 MOU, the EPA provides agreement with CHSRA's determination that Alternative A is the preliminary LEDPA for the San Francisco to San Jose section of the 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.

Preliminary Compensatory Mitigation Plan

The Preliminary Compensatory Mitigation Plan (pCMP) is a conceptual strategy specifying resources available for the establishment and/or rehabilitation of aquatic resources. The submitted Checkpoint C Package provides a general overview of mitigation needs, opportunities, and plausible implementation scenarios. According to the submittal, Alternative A would result in the discharge of fill into 11.8 acres of aquatic resources, including 6.1 acres of wetlands and 5.7 acres of nonwetlands. The pCMP proposes that a combination of mitigation bank credit purchase, on-site restoration, and off-site restoration would be used to satisfy mitigation requirements

under Section 404. On-site compensatory mitigation is the planned mitigation for temporary impacts relating to all aquatic resources. The pCMP discussed the Visitacion Creek/Bay resiliency mitigation concept, which proposes rerouting Visitacion Creek. The pCMP also proposes the use of in-lieu fee programs and mitigation banks as available.

Per the NEPA/404 MOU, the EPA provides agreement that the pCMP may provide sufficient mitigation to meet the needs of the project under Section 404 of the Clean Water Act. The 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. The EPA looks forward to collaborating with your agency 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 discharges to waters of the U.S. will be confirmed during project construction. If discharges to waters of the U.S. are reduced or increased as a result of changes in project design, adjustments to the amount of compensatory mitigation will be made accordingly.

Thank you for requesting the EPA's agreement on the LEDPA and pCMP. We look forward to further participation in the development of environmental documents for this project. The EPA will ultimately review EISs for each section of the California HSR system pursuant to NEPA, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. The EPA will also review CWA Section 404 permit applications for each HSR section for compliance with the EPA's CWA Section 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, Carolyn Mulvihill, at (415) 947-3554 or by email at mulvihill.carolyn@epa.gov.

Sincerely,

For Jean Prijatel
Manager, Environmental Review Branch

cc via email:
Sue Meyer, California High Speed Rail Authority
Bryan Matsumoto, U.S. Army Corps of Engineers