

Appendix H

Agency Letters

**APPENDIX H
Agency Letters**

Date	To	From	Subject
August 16, 2007	Mr. John Donahue, Valley Transportation Agency	George Fowler, P.E., Capital Program Services Division	Flood Protection Project Needs along Upper Penitencia Creek and Coyote Creek in the vicinity of the Proposed SVRT Alignment
October 1, 2007	Mr. John Donahue, Valley Transportation Agency	Manuel Pineda, San Jose Department of Transportation	Riparian Corridor Setback for Upper Penitencia Creek and Coyote Creek
October 1, 2007	Tom Fitzwater	Chris Nagano, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service	Environmental Review Process for the Silicon Valley Rapid Transit Project in Santa Clara County, California
November 20, 2007	Mr. Milford Wayne Donaldson, Office of Historic Preservation	Thomas Fitzwater, Valley Transportation Authority	Silicon Valley Rapid Transit Corridor Project
June 25, 2008	Mr. Milford Wayne Donaldson, Office of Historic Preservation	Thomas Fitzwater, Valley Transportation Authority	Silicon Valley Rapid Transit Corridor Project – FTA040219A
October 9, 2008			California Department of Fish and Game, Natural Diversity Database, Selected Elements by Scientific Name - Landscape
October 9, 2008			California Department of Fish and Game, Natural Diversity Database, Selected Elements by Common Name - Landscape
October 21, 2008	Mr. Wes Toy, Santa Clara Valley Transit Authority	Bruce H. Wolfe, California Regional Water Quality Control Board	Approval of the Containment Management Plan for the Bay Area Rapid Transit (BART) Extension Project to Milpitas, San Jose, and Santa Clara, Santa Clara County
July 9, 2009	Mr. John Fowler, Advisory Council on Historic Preservation	Leslie T. Rogers, Federal Transit Administration	Silicon Valley Rapid Transit Corridor Project

Date	To	From	Subject
July 29, 2009	Leslie T. Rogers, Federal Transit Administration – Region IX	LaShavio Johnson Advisory Council on Historic Preservation	Proposed Silicon Valley Rapid Transit Corridor Project, Alameda and Santa Clara Counties, California
January 14, 2010	Blythe Semmer, Advisory Council on Historic Preservation	Leslie T. Rogers, Federal Transit Administration	ACHP Case #1934, Silicon Valley Rapid Transit Corridor Project, FTA A040219A
January 19, 2010	Leslie Rogers, Federal Transit Administration, Region IX	Charlene Dwin Vaughn, AICP, Advisory Council on Historic Preservation	FTA New Starts funding for Silicon Valley Rapid Transit Corridor Fremont to San Jose, California
January 29, 2010	Leslie T. Rogers, Regional Administrator, Federal Transit Administration – Region 9	Cay C. Goude, U.S. Fish and Wildlife Service	Informal Consultation on the Proposed Silicon Valley Rapid Transit Corridor Project, Santa Clara and Alameda Counties, California
February 12, 2010	Leslie T. Rogers, Regional Administrator, Federal Transit Administration – Region 9	Rodney C. McInnis, U.S. Department of Commerce, National Oceanic and Atmospheric Administration	

August 16, 2007

RECEIVED

AUG 20 2007

SVRT PDCC

CC: DENNIS RITCHIE
DAREN GEE
MARK ROBINSON
HASSAN BASMA
TOM FITZWATER
JOHN DONAHUE

Mr. John Donahue
Engineering Group Manager, Northern Area
Valley Transportation Authority
3331 North First Street, Building A
San Jose, CA 95134

Subject: Flood Protection Project Needs along Upper Penitencia Creek and Coyote Creek in the Vicinity of the Proposed SVRT Alignment

Dear Mr. Donahue:

As a follow-up to previous discussions with VTA and City of San Jose (City) staffs, this letter summarizes the Santa Clara Valley Water District's (District) anticipated requirements for planned flood protection projects along portions of the subject creeks.

Upper Penitencia Creek:

Along Upper Penitencia Creek, from the Coyote Creek confluence to Dorel Drive, the District is partnering with the U.S. Army Corps of Engineers (Corps) to prepare a feasibility study and an environmental impact report/statement for future flood protection improvements. The Corps expects to complete these planning documents by late-2008. Currently, a preferred project alternative has not been selected; however, District staff, in cooperation with a number of stakeholders, has identified a staff-preferred alternative likely to be adopted at the time the study is completed.

Between Coyote Creek and approximately 400 feet easterly of the railroad crossing (where the creek turns 90-degrees), the staff-preferred alternative would require a minimum creek width of 205 feet starting from the northerly top of bank, adjacent to the existing Berryessa Road alignment, and extend southerly into the adjacent private properties. This setback area would provide enough space to create a more natural floodplain by excavating a bench for flood protection and incorporating a joint maintenance road/recreational trail. Attached is a typical cross-section which illustrates this preliminary alternative.

Coyote Creek:

Along Coyote Creek, between Montague Expressway and Interstate 280, the District is preparing an engineer's report and environmental impact report for future flood protection improvements. The District is currently evaluating project alternatives and has not yet selected a preferred alternative. However, conceptual alternatives to widen the creek have been developed in the area between Berryessa Road and just southerly of Mabury Road. These conceptual alternatives utilize a 100-foot setback along the east bank, starting from the easterly tree dripline and extend east into the private properties for the future flood protection improvements. This setback would be the minimum right-of-way required for flood protection and provides an opportunity to excavate a bench to convey high flood flows while incorporating a joint-use maintenance road and recreational trail along the creek in the future. It is recognized that less than the 100-foot setback may be available adjacent to the Mabury Road bridge due to

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UPPER PENITENCIA CREEK - REACH 1 (FLEA MARKET PROPERTY)

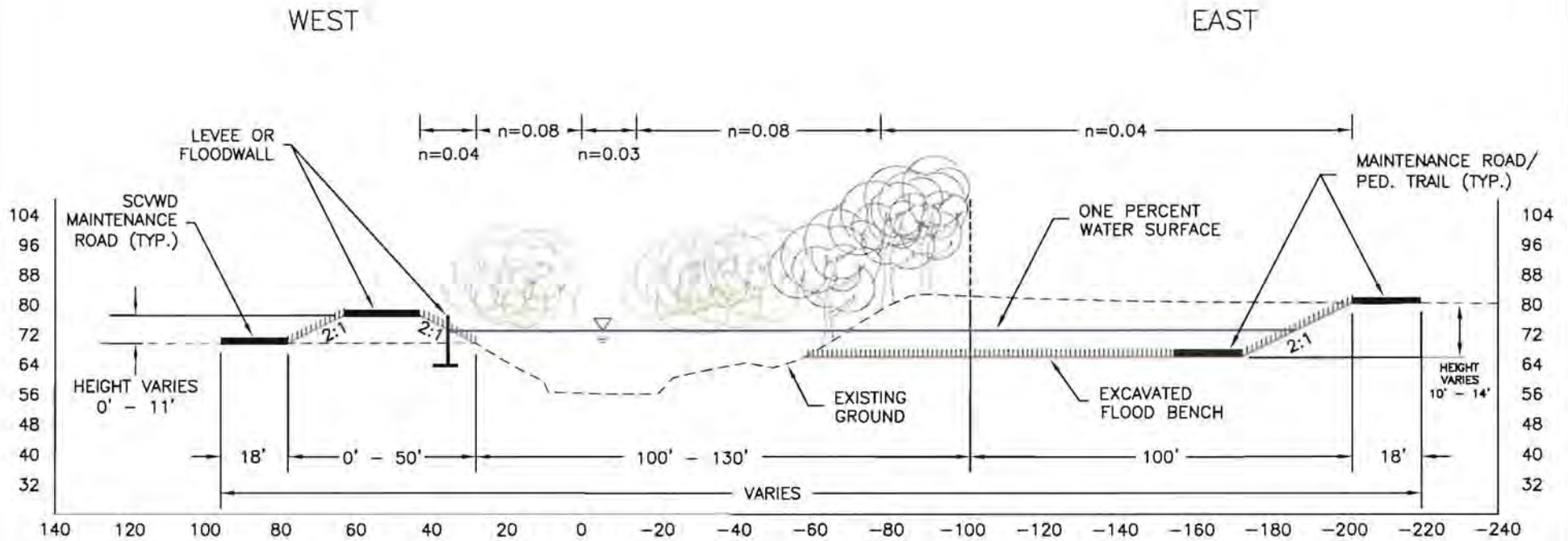
TYPICAL CROSS SECTION (LOOKING UPSTREAM)



NOT TO SCALE

NOTES:

- 1) CREEK INVERT ELEVATION AT 60' NEAR COYOTE CREEK.
- 2) THE LOW FLOW CHANNEL WILL BE SLIGHTLY WIDENED AND HAVE A 400 CFS CAPACITY (2-YEAR EVENT).
- 3) THE FOLLOWING "N" VALUES WILL APPLY:
 - * $n = 0.08$ - RIPARIAN HABITAT, DENSE GROWTH WITH SOME MAINTENANCE.
 - * $n = 0.04$ - SMALL SHRUBS AND GRASSY AREAS, MAINTENANCE REQUIRED.
 - * $n = 0.03$ - LOW FLOW CHANNEL.
- 4) 12' BENCH CUT NEAR COYOTE CREEK.
- 5) 205' TYPICAL WIDTH FROM COYOTE CREEK TO KING ROAD.



COYOTE CREEK (ADJACENT TO FLEA MARKET)
TYPICAL CROSS SECTION (LOOKING DOWNSTREAM)

DRAFT

Santa Clara Valley Water District 

MID-COYOTE PROJECT
 MONTAGUE EXPWY. TO I-280
 TYPICAL CROSS SECTION

SCALE: NTS

REVISED: 5/31/06

the City's existing corporation yard access road intersection. Attached is a preliminary typical cross-section which illustrates this conceptual alternative.

The District currently has limited land ownership or easements along the private properties that are adjacent to Upper Penitencia and Coyote Creeks in this area. We are looking to the City to assist the District in reserving the necessary right-of-way for future flood protection improvements through enforcement of the City's Riparian Corridor Policy when approving future development plans in these areas.

If you have any questions regarding the District's flood protection projects or the information provided, please contact me at (408) 265-2607 ext. 2748.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Fowler", with a long horizontal flourish extending to the right.

George Fowler, P.E.
Senior Project Manager
Capital Program Services Division

Attachments

cc: M. Klemencic
K. Oven
S. Tippetts
T. Hipol
Z. Shao
K. Sibley
S. Katric
S. Bui
G. Fowler

VTA – Daren Gee

City of San Jose – Henry Servin, Manuel Pineda, Mirabel Aguilar

U.S. Army Corps of Engineers – Jim Miller



RECEIVED
OCT 29 2007
SVRT PDCC

Department of Transportation

JAMES R. HELMER - DIRECTOR

October 1, 2007

Mr. John Donahue
Northern Area Group Manager
VTA
3103 North First Street
San Jose CA 95134

SUBJECT: RIPARIAN CORRIDOR SETBACK FOR UPPER PENITENCIA CREEK AND
COYOTE CREEK

Dear Mr. Donahue,

This letter is to verify that the City Council on August 14, 2007 has approved a Planned Development Zoning for the San Jose Flea Market mixed-use development project which requires a 100' riparian corridor setback for Upper Penitencia Creek and a setback of 100' from the outside edge of the riparian habitat for Coyote Creek, with the exception of a reduced setback from Coyote Creek adjacent to Mabury Road, as described further below.

The City's Riparian Corridor Policy provides for exceptions to the 100' setbacks as long as basic riparian habitat protection objectives are achieved; these exceptions include geometric characteristics of lots and roads. Conditions warranting an exception exist at Coyote Creek north of Mabury Road as described in the Flea Market Amendment and Planned Development Rezoning Environmental Impact Report. Accordingly, the City Council on August 14, 2007 approved a reduced Coyote Creek riparian setback north of Mabury Road to allow proper alignment of the planned new road serving the Flea Market property with the existing driveway on the south side of Mabury Road. These setbacks are supportive of the future SCVWD flood control projects along Upper Penitencia Creek and along Coyote Creek, as described in the attached letter from the SCVWD dated August 16, 2007.

If you have any questions or require additional information please call me at (408) 975-3295.

Sincerely,

Manuel Pineda
Division Manager

Attachments: Flood Protection Project Needs along Upper Penitencia Creek and Coyote Creek in the Vicinity of the Proposed SVRT Alignment dated August 16, 2007

cc: Akoni Danielsen, PBCE
Michael Liw, Public Works
Henry Servin, DOT
Daren Gee, VTA

807108113

From: Chris_Nagano@fws.gov [mailto:Chris_Nagano@fws.gov]

Sent: Monday, October 01, 2007 5:39 PM

To: Fitzwater, Tom

Cc: djohnston@dfg.ca.gov; Ryan_Olah@fws.gov; Boyd, Darryl; Eric_Tattersall@fws.gov; Jonathan.Ambrose@noaa.gov; Mike_Thomas@fws.gov; Jared.Hart@sanjoseca.gov; Cori_Mustin@fws.gov; ldavis@dfg.ca.gov; Brian Wines

Subject: Environmental Review Process for the Silicon Valley Rapid Transit Project in Santa Clara County, California

Dear Mr. Fitzwater:

This electronic mail message is in response to the environmental review process for the Silicon Valley Rapid Transit Project. At issue are the potential adverse effects of the proposed project on the threatened California red-legged frog (*Rana aurora draytonii*), threatened bay checkerspot butterfly (*Euphydryas editha bayensis*), threatened California red-legged frog (*Rana aurora draytonii*), threatened California tiger salamander (*Ambystoma californiense*), endangered least Bell's vireo (*Vireo bellii pusillus*), endangered Contra Costa goldfields (*Lasthenia conjugens*), endangered vernal pool tadpole shrimp (*Lepidurus packardii*), endangered California least tern (*Sterna antillarum browni*), endangered California clapper rail (*Rallus longirostris obsoletus*), endangered salt marsh harvest mouse (*Reithrodontomys raviventris*), endangered Santa Clara Valley dudleya (*Dudleya setchellii*), endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*) and other listed species under the authority of the U.S. Fish and Wildlife Service (Service). We also are concerned about the potential effects of the project on the American badger (*Taxidea taxus*) and the burrowing owl (*Spetylo canicularia*). This review is based on the information dated September 27, 2007, that was provided to the Service by the Santa Clara Valley Transportation Agency. The information was received by this Field Office on October 1, 2007. Based on the information provided by the County of Santa Clara and otherwise available to us, the proposed project is located in an area of Santa Clara County that may provide suitable habitat for the California red-legged frog, bay checkerspot butterfly, California tiger salamander, least Bell's vireo, vernal pool tadpole shrimp, California least tern, California clapper rail, salt marsh harvest mouse, Contra Costa goldfield, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, other listed species, American badger, and the burrowing owl, or is otherwise naturally accessible to them.

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only is the California red-legged frog, bay checkerspot butterfly, California tiger salamander, vernal pool tadpole shrimp, California least tern, California clapper rail, salt marsh harvest mouse, and least Bell's vireo protected from such activities as collecting and hunting, but also from actions that result in their death or injury due to the damage or destruction of their

habitat. The Act prohibits activities that "...remove and reduce to possession any listed plant from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law." The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

As part of the environmental review for this proposed project, the Service recommends that habitat evaluations and/or survey, as appropriate, by qualified biologists following Service and California Department of Fish and Game protocols be completed for the California red-legged frog, bay checkerspot butterfly, California tiger salamander, least Bell's vireo, vernal pool tadpole shrimp, California least tern, California clapper rail, salt marsh harvest mouse, Contra Costa goldfield, Santa Clara Valley dudleya, and the Metcalf Canyon jewelflower in the action area. We recommend the County of Santa Clara provide us and the California Department of Fish and Game with the results of these assessments and/or survey. If it is determined that the proposed project may result in take or adverse effects to the these species, and/or other federally listed species under the authority of the Service, including indirect and/or cumulative effects, we recommend that the Santa Clara Valley Transportation Agency obtain authorization for incidental take for the appropriate listed animal species pursuant to sections 7 or 10(a)(1)(B) of the Act prior to certification of the final environmental documents.

We recommend adequate habitat assessments/surveys, as appropriate, for the badger, burrowing owl, loggerhead shrike (*Lanius ludovicianus*), horned lark (*Eremophila alpestris*), and nesting raptors be completed by a qualified biologist in the action area. Photocopies of the data and findings from the habitat assessments/surveys should be provided to the Service and the California Department of Fish and Game. The Service recommends that adequate avoidance or conservation measures be implemented if it is determined that any of these species will be adversely affected by the proposed project.

Portions of the proposed project are located within the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) Planning Area. We are concerned about the potential adverse effects of the proposed project on the California red-legged frog. We also are

concerned about effects on species that do not currently have a Federal listing status but are proposed for coverage under the draft HCP/NCCP (covered species). The proposed Silicon Valley Rapid Transit Project is considered an interim project under the HCP/NCCP Planning Agreement (County of Santa Clara *et al.* 2005). The Planning Agreement states that “The Parties agree that potential conflicts with the preliminary conservation objectives shall be identified during the Interim Process to help achieve the preliminary conservation objectives, not preclude important conservation planning options or connectivity between areas of high habitat values, and help guide and ensure development of a successful [HCP/NCCP] that incorporates these interim projects” (County of Santa Clara *et al.* 2005). Therefore, we recommend that the applicant review the draft HCP/NCCP chapters, which are available at <http://www.scv-habitatplan.org/www/default.aspx>, to ensure that the proposed project does not preclude the developing conservation strategy for covered species.

The County of Santa Clara should contact NOAA - Fisheries regarding the potential effects of this project on the listed species, and animals and plants under their authority. The NOAA - Fisheries contact may be reached at: Jonathan.Ambrose@noaa.gov.

If you have any questions, please contact me via electronic mail or at telephone 916/414-6600.

s/Christopher D. Nagano

Deputy Assistant Field Supervisor
Endangered Species Program
Sacramento Fish and Wildlife Office
U.S. Fish and Wildlife Service
2800 Cottage Way Room W-2605
Sacramento, California 95825

Literature Cited

County of Santa Clara, Santa Clara Valley Water District, City of Gilroy, City of Morgan Hill, City of San Jose, Santa Clara Valley Transportation Authority, California Department of Fish and Game, and the United States Fish and Wildlife Service. 2005. Planning Agreement by and among the County of Santa Clara, the Santa Clara Valley Water District, the City of Gilroy, the City of Morgan Hill, the City of San Jose, the Santa Clara Valley Transportation Authority, the California Department of Fish and Game, and the United States Fish and Wildlife Service regarding the Santa Clara Valley Natural Community Conservation Plan. San Jose, California



November 20, 2007

Milford Wayne Donaldson, FAIA, State Historic Preservation Officer
California Office of Historic Preservation
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001

Subject: Silicon Valley Rapid Transit Corridor Project

Dear Mr. Donaldson:

In March 2003, the Federal Transit Administration (FTA) and the Santa Clara Valley Transportation Authority (VTA) began consultations with the Office of Historic Preservation (OHP) for the Silicon Valley Rapid Transit Corridor Project (SVRTC). Since our last contact, the design of the SVRTC has progressed. VTA is now preparing the Revised Draft Environmental Impact Statement for the project as it is currently designed.

To account for the project design changes, the cultural resources technical studies are being updated. Far Western Anthropological Research Group, VTA's archaeological consultant, is working on a *Revised Archaeological Survey and Sensitivity Report* for the current project and JRP Historical Consulting, VTA's historical consultant, is working on an *Addendum Historical Resources Inventory* to cover the changes in the project since the January 2003 *Historical Resources Evaluation Report* was completed. One of the project changes under consideration has the potential to affect a National Register building in downtown San Jose.

VTA would like to meet with the OHP to discuss the project changes and determine the best way to proceed on this project. Attached, for your reference, is a summary of our consultation efforts to date.

Please contact Lauren Bobadilla at (408) 321-5776 or lauren.bobadilla@vta.org and she will arrange the meeting. We appreciate your attention and cooperation on this large-scale, high profile public transportation project, and look forward to continuing our consultation with you.

Sincerely,

Thomas W. Fitzwater, AICP
Environmental Programs and Resources Management Manager

TWF:LGB:kh

cc: Jerome Wiggins, FTA
Allika Ruby, Far Western
Meta Bunse, JRP

Attachment

**SILICON VALLEY RAPID TRANSIT CORRIDOR PROJECT BY FTA/VTA
SUMMARY OF CULTURAL RESOURCES CONSULTATION WITH SHPO**

Date	Letter	Discussion
3/19/03	Letter FTA to SHPO	<ul style="list-style-type: none"> • Initiation of consultation with SHPO; • Authorization of VTA to consult directly with SHPO; • Submittal of APE, ASSR, & HRER for review.
6/9/03	Letter SHPO to FTA	<ul style="list-style-type: none"> • Recommend APE include the bored tunnel or explain rationale for excluding tunnel; • Concur that the 20 NR eligible properties are still eligible; • Concur that 11 properties determined eligible for NR are eligible; • Other properties are not eligible under Criterion A; • Inventory of archaeological resources is adequate if FTA proposes to use a phased process for identification and evaluation and if FTA consults with SHPO on subsequent phases.
7/2/03	Letter JRP/VTA to SHPO	<ul style="list-style-type: none"> • Request for clarification on eligibility determination for Santa Clara tower; • Request for clarification on significance of other 6 properties under all criteria.
7/9/03	Letter SHPO to FTA	<ul style="list-style-type: none"> • 884 E. Santa Clara Street (11-24 / 467-30-005) is not eligible under any criteria; • 17-25 E. Santa Clara Street (12-33 / 467-21-024) is not eligible under any criteria; • 127-145 Post Street & 33-45 S. Market Street (12-45 / 259-40-021 & 028) is not eligible under any criteria; • 101 W. Santa Clara Street (12-47 / 259-34-046) is eligible for NR; • 151 W. Santa Clara Street (12-53 / 259-35-049) assumed eligible for NR; • 161-167 W. Santa Clara Street (12-54 / 259-35-035) is not eligible under any criteria; • Santa Clara Tower, Benton Street & Railroad Avenue (15-03 / 230-06-040) was and still is eligible for NR.
9/5/03	Letter Far Western /VTA to SHPO	<ul style="list-style-type: none"> • Explained why bored tunnel is not in APE; • Explains VTA's intention to conduct a phased process of identification and evaluation; • Requests meeting to discuss.
10/30/03	Meeting Far Western /JRP /VTA with SHPO	<ul style="list-style-type: none"> • Discussed phased process. • VTA to submit letter to SHPO with additional information.
02/13/04	Letter VTA/Far Western to SHPO	<p>Provided information and requested concurrence on the following:</p> <ul style="list-style-type: none"> • Portal gradients are adequately defined and that the APE is adequately defined; • Deep tunnel monitoring is infeasible; • Proposed plan phasing will adequately satisfy Section 106.

Date	Letter	Discussion
5/6/04	Letter SHPO to VTA	Response to February 13, 2004 letter. <ul style="list-style-type: none"> • SHPO believes the entire subsurface extent of the project should be in the APE. • Acknowledged that monitoring during excavation/tunneling is dangerous and is an unnecessary risk. • Identification efforts are not yet adequate.
7/14/04	Letter VTA/Far Western to SHPO	Response to May 6, 2004 letter. <ul style="list-style-type: none"> • APE amended to include the deep tunnel.; • Restated understanding that project will have adverse effects on historic properties and plan to execute MOA to resolve the impacts. Submitted Draft MOA for SHPO review and comment.
8/3/04	Letter SHPO to VTA	Response to July 14, 2004 letter. <ul style="list-style-type: none"> • Asked for explicit statement of the APE's complete extent and is not able to concur on adequacy of APE. • Asked for VTA to submit documentation of VTA's application of the criteria of adverse effect for the historic properties presently known to be in the APE and a statement of the finding of effect.
7/12/05	Letter VTA/Far Western to SHPO	Response to August 3, 2004 letter. <ul style="list-style-type: none"> • Sent revised APE description, modified to include the tunnel; • Request concurrence on adequacy of APE. • Explained that VTA is using a phased process to apply the criteria of adverse effects, consistent with phased identification and evaluation efforts as allowed. • Request concurrence on the appropriateness of using a phased process. • Statement that project will have an adverse effect & submitted draft MOA. • Requested concurrence that there will be an adverse effect and that a MOA & CRTP is appropriate.
9/20/05	Letter OHP to VTA	Response to July 12, 2005 letter. <ul style="list-style-type: none"> • Concurred on the adequacy of the APE. • No comments on MOA until review FOE.



June 25, 2008

Milford Wayne Donaldson, FAIA, State Historic Preservation Officer
California Office of Historic Preservation
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001

Subject: Silicon Valley Rapid Transit Corridor Project--FTA040219A

Dear Mr. Donaldson:

In March 2003, the Federal Transit Administration (FTA) and the Santa Clara Valley Transportation Authority (VTA) began consultations with the Office of Historic Preservation (OHP) for the Silicon Valley Rapid Transit Corridor Project (SVRTC). A map of the Area of Potential Effects (APE), a Historic Resources Evaluation Report (HRER), and an Archaeological Survey and Sensitivity Report (ASSR) were submitted to the OHP for review. By September 2005, after many months of consultations, the OHP had concurred on the adequacy of the APE and the eligibility of historic architectural properties within the APE.

Since our last consultation, an Environmental Impact Report (EIR) and Supplemental EIR have been approved by the VTA Board of Directors. Also, the design of the SVRTC has progressed and VTA is now preparing the Revised Draft Environmental Impact Statement for the current project.

To account for the project design changes, the cultural resources technical studies have been updated or revised. JRP Historical Consulting, VTA's historical consultant, has completed an *Addendum Historical Resources Inventory* to cover the changes in the project since the OHP concurred with the evaluations included in the 2003 *Historical Resources Evaluation Report*. In addition, Far Western Anthropological Research Group, VTA's archaeological consultant, has completed a *Revised Archaeological Survey and Sensitivity Report* for the current project.

The following cultural resources documents are now submitted to the OHP for review:

- The revised Area of Potential Effects (APE)
 - Figure 3.1. Addendum APE for Historic Architecture
 - Figure 4. Archaeological Study Area and Area of Potential Effects
- The "*Addendum Technical Memorandum: Historical Resources Inventory and Evaluation Report for SVRTC EIS*," June 2008 (Addendum HRER); and
- The "*Technical Memorandum: Archaeological Survey and Sensitivity Report for SVRTC EIS/SEIR Alternative*," March 2008 Revised Draft (Revised ASSR).

Milford Wayne Donaldson, FAIA, State Historic Preservation Officer
June 25, 2008
Page 2

Also enclosed, for your reference, are copies of the OHP/VTA/FTA consultation letters for this project and a CD containing the electronic files of all attachments to this letter.

FTA and VTA now request the following by the OHP:

- Review of the APES, Addendum HRER, and Revised ASSR;
- Concurrence on the adequacy of the project's APES;
- Concurrence on the adequacy of the identification effort for the architectural properties and the Addendum HRER;
- Concurrence on the appropriateness of using a phased process for applying the criteria of adverse effects regarding archaeological resources pursuant to CFR 800.5(a).
- Concurrence on the adequacy of the archaeological inventory and the Revised ASSR;
- Concurrence that the project will have an adverse effect on archaeological resources pursuant to 36 CFR 800.5 and that a Memorandum of Agreement (MOA), supported by a Cultural Resources Treatment Plan (CRTP), is an appropriate mechanism for resolving the adverse effects on archaeological resources in a phased manner pursuant to 36 CFR 800.6.

Please contact Lauren Bobadilla at (408) 321-5776 or lauren.bobadilla@vta.org if you have any questions or would like to arrange a meeting to discuss the project.

We appreciate your attention and cooperation on this large-scale, high profile public transportation project, and look forward to continuing our consultation with you.

Sincerely,



Thomas W. Fitzwater, AICP
Environmental Programs and Resources Management Manager

TWF:LGB:kh

cc: Jerome Wiggins, FTA
Allika Ruby, Far Western
Meta Bunse, JRP
Phyllis Potter, CirclePoint

Enclosures

California Department of Fish and Game
Natural Diversity Database
Selected Elements by Scientific Name - Landscape

Scientific Name	Common Name	Element Code	Federal Status	State Status	Global Rank	State Rank	CNPS	CDFG
1 <i>Arctostaphylos andersonii</i>	Anderson's manzanita	PDERI04030			G2	S2?	1B.2	
2 <i>Astragalus tener</i> var. <i>tener</i>	alkali milk-vetch	PDFAB0F8R1			G1T1	S1.1	1B.2	
3 <i>Atriplex depressa</i>	brittlescale	PDCHE042L0			G2Q	S2.2	1B.2	
4 <i>Atriplex joaquiniana</i>	San Joaquin spearscale	PDCHE041F3			G2	S2.1	1B.2	
5 <i>Balsamorhiza macrolepis</i> var. <i>macrolepis</i>	big-scale balsamroot	PDAST11061			G3G4T2	S2.2	1B.2	
6 <i>California macrophylla</i>	round-leaved filaree	PDGER01070			G3	S3.1	1B.1	
7 <i>Campanula exigua</i>	chaparral harebell	PDCAM020A0			G2	S2.2	1B.2	
8 <i>Centromadia parryi</i> ssp. <i>congdonii</i>	Congdon's tarplant	PDAST4R0P1			G4T3	S3.2	1B.2	
9 <i>Chorizanthe robusta</i> var. <i>robusta</i>	robust spineflower	PDPGN040Q2	Endangered		G2T1	S1.1	1B.1	
10 <i>Cirsium fontinale</i> var. <i>campylon</i>	Mt. Hamilton fountain thistle	PDAST2E163			G2T2	S2.2	1B.2	
11 <i>Clarkia concinna</i> ssp. <i>automixa</i>	Santa Clara red ribbons	PDONA050A1			G5?T3	S3.3	4.3	
12 <i>Collinsia multicolor</i>	San Francisco collinsia	PDSCR0H0B0			G2	S2.2	1B.2	
13 <i>Cordylanthus maritimus</i> ssp. <i>palustris</i>	Point Reyes bird's-beak	PDSCR0J0C3			G4?T2	S2.2	1B.2	
14 <i>Dirca occidentalis</i>	western leatherwood	PDTHY03010			G2G3	S2S3	1B.2	
15 <i>Dudleya setchellii</i>	Santa Clara Valley dudleya	PDCRA040Z0	Endangered		G1	S1.1	1B.1	
16 <i>Eriogonum nudum</i> var. <i>decurrans</i>	Ben Lomond buckwheat	PDPGN08492			G5T2	S2.1	1B.1	
17 <i>Eryngium aristulatum</i> var. <i>hooveri</i>	Hoover's button-celery	PDAPI0Z043			G5T2	S2.1	1B.1	
18 <i>Fritillaria liliacea</i>	fragrant fritillary	PMLIL0V0C0			G2	S2.2	1B.2	
19 <i>Hoita strobilina</i>	Loma Prieta hoita	PDFAB5Z030			G2	S2.1	1B.1	
20 <i>Lasthenia conjugens</i>	Contra Costa goldfields	PDAST5L040	Endangered		G1	S1.1	1B.1	
21 <i>Malacothamnus arcuatus</i>	arcuate bush-mallow	PDMAL0Q0E0			G2Q	S2.2	1B.2	
22 <i>Malacothamnus hallii</i>	Hall's bush-mallow	PDMAL0Q0F0			G1Q	S1.2	1B.2	
23 <i>Monardella villosa</i> ssp. <i>globosa</i>	robust monardella	PDLAM180P7			G5T2	S2.2	1B.2	
24 <i>Navarretia prostrata</i>	prostrate vernal pool navarretia	PDPLM0C0Q0			G2?	S2.1?	1B.1	
25 <i>Plagiobothrys glaber</i>	hairless popcorn-flower	PDBOR0V0B0			GH	SH	1A	
26 <i>Sidalcea malachroides</i>	maple-leaved checkerbloom	PDMAL110E0			G3G4	S3S4.2	4.2	
27 <i>Streptanthus albidus</i> ssp. <i>albidus</i>	Metcalf Canyon jewel-flower	PDBRA2G011	Endangered		G2T1	S1.1	1B.1	
28 <i>Streptanthus albidus</i> ssp. <i>peramoenus</i>	most beautiful jewel-flower	PDBRA2G012			G2T2	S2.2	1B.2	
29 <i>Suaeda californica</i>	California seablite	PDCHE0P020	Endangered		G1	S1.1	1B.1	
30 <i>Tropidocarpum capparideum</i>	caper-fruited tropidocarpum	PDBRA2R010			G1	S1.1	1B.1	

California Department of Fish and Game
Natural Diversity Database
Selected Elements by Common Name - Landscape

Common Name	Scientific Name	Element Code	Federal Status	State Status	Global Rank	State Rank	CNPS	CDFG
1 Alameda song sparrow	Melospiza melodia pusillula	ABPBXA301S			G5T2?	S2?		SC
2 Alameda whipsnake	Masticophis lateralis euryxanthus	ARADB21031	Threatened	Threatened	G4T2	S2		
3 American peregrine falcon	Falco peregrinus anatum	ABNKD06071	Delisted	Endangered	G4T3	S2		
4 Bay checkerspot butterfly	Euphydryas editha bayensis	IILEPK4055	Threatened		G5T1	S1		
5 Berkeley kangaroo rat	Dipodomys heermanni berkeleyensis	AMAFD03061			G3G4T1	S1		
6 California black rail	Laterallus jamaicensis coturniculus	ABNME03041		Threatened	G4T1	S1		
7 California clapper rail	Rallus longirostris obsoletus	ABNME05016	Endangered	Endangered	G5T1	S1		
8 California red-legged frog	Rana draytonii	AAABH01022	Threatened		G4T2T3	S2S3		SC
9 California tiger salamander	Ambystoma californiense	AAAAA01180	Threatened		G2G3	S2S3		SC
10 Cooper's hawk	Accipiter cooperii	ABNKC12040			G5	S3		
11 Hom's micro-blind harvestman	Microcina homi	ILARA47020			G1	S1		
12 Opler's longhorn moth	Adela oplerella	IILEE0G040			G2G3	S2S3		
13 San Francisco dusky-footed woodrat	Neotoma fuscipes annectens	AMAFF08082			G5T2T3	S2S3		SC
14 San Joaquin kit fox	Vulpes macrotis mutica	AMAJA03041	Endangered	Threatened	G4T2T3	S2S3		
15 Santa Cruz kangaroo rat	Dipodomys venustus venustus	AMAFD03042			G4T1	S1		
16 Townsend's big-eared bat	Corynorhinus townsendii	AMACC08010			G4	S2S3		SC
17 Yuma myotis	Myotis yumanensis	AMACC01020			G5	S4?		
18 burrowing owl	Athene cucularia	ABNSB10010			G4	S2		SC
19 foothill yellow-legged frog	Rana boylei	AAABH01050			G3	S2S3		SC
20 golden eagle	Aquila chrysaetos	ABNKC22010			G5	S3		
21 great blue heron	Ardea herodias	ABNGA04010			G5	S4		
22 hoary bat	Lasiurus cinereus	AMACC05030			G5	S4?		
23 mimic tryonia (=California brackishwater snail)	Tryonia imitator	IMGASJ7040			G2G3	S2S3		
24 pallid bat	Antrozous pallidus	AMACC10010			G5	S3		SC
25 salt-marsh harvest mouse	Reithrodontomys raviventris	AMAFF02040	Endangered	Endangered	G1G2	S1S2		
26 salt-marsh wandering shrew	Sorex vagrans halicoetes	AMABA01071			G5T1	S1		SC
27 saltmarsh common yellowthroat	Geothlypis trichas sinuosa	ABPBX1201A			G5T2	S2		SC
28 steelhead - Central California Coast ESU	Oncorhynchus mykiss irideus	AFCHA0209G	Threatened		G5T2Q	S2		
29 tricolored blackbird	Agelaius tricolor	ABPBXB0020			G2G3	S2		SC
30 vernal pool tadpole shrimp	Lepidurus packardi	ICBRA10010	Endangered		G3	S2S3		
31 western pond turtle	Actinemys marmorata	ARAAD02030			G3G4	S3		SC
32 western snowy plover	Charadrius alexandrinus nivosus	ABNNB03031	Threatened		G4T3	S2		SC
33 white-tailed kite	Elanus leucurus	ABNKC06010			G5	S3		



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Date: October 21, 2008
File No. 43S1073 (AVC)

Santa Clara Valley Transit Authority (VTA)
Attn: Mr. Wes Toy
wes.toy@vta.org
3331 North First Street
San Jose, CA 95134-1906

SUBJECT: Approval of the Contaminant Management Plan for the Bay Area Rapid Transit (BART) Extension Project to Milpitas, San Jose, and Santa Clara, Santa Clara County

Dear Mr. Toy:

This letter responds to your March 2006 Contaminant Management Plan (CMP) prepared by your consultant, AECOM, Inc., formerly Earth Tech, Inc. As explain below, I approve the CMP and require VTA to submit draft remedial action plans, draft fact sheets, and radius lists for individual project segments.

Background

The BART extension project (Project) will extend the BART system south from the currently planned Warm Springs station in Fremont through Milpitas to Santa Clara Street in San Jose, southwest through downtown San Jose, and then northwest to Santa Clara. The Project is divided into three distinct segments, and detailed project design reports will be produced for each segment. Construction activities at the Project will likely expose contaminated soils, groundwater, and/or other hazardous materials where they could be a potential concern to human health and the environment.

CMP Summary

The CMP is intended for use during design and construction of the Project. The CMP describes how all potentially-contaminated materials associated with the Project will be characterized, evaluated, handled, transported, stored, and treated. It also provides criteria for material reuse, and contains a public participation plan.

Water Board Response and Requirement

The CMP satisfied Water Board requirements. I hereby approve the CMP.

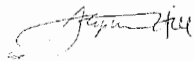
Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

For each Project segment, VTA is required to submit a draft remedial action plan, a draft fact sheet, and a mailing list for surrounding property owners and resident/occupants within a 1000-foot radius of the contaminant management sites. The mailing list should also include any other interested parties or groups, including relevant public agencies and environmental/community groups. **VTA shall submit these reports at least 90 days prior to the start of any remedial action on that Project segment.**

This requirement for reports is made pursuant to Water Code Section 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Water Board staff.

If you have any questions, please contact Adriana Constantinescu of my staff at (510) 622-2353 [e-mail AConstantinescu@waterboards.ca.gov].

Sincerely,



Digitally signed by Stephen Hill
Date: 2008.10.21 14:11:11 -07'00'

Bruce H. Wolfe
Executive Officer

Attachment: 13267 Fact Sheet
cc:

AECOM, Inc.
Mr. Dan Ruslen
zeynep.ungun@earthtech.com
695 River Oaks Parkway
San Jose, CA 95134

City of Milpitas
Mr. Greg Armendariz, City Engineer
garmendariz@ci.milpitas.ca.gov
455 East Calaveras Boulevard
Milpitas, CA 95035

City of Fremont
Ms. Jan Perkins, City Manager
JPerkins@ci.fremont.ca.gov
3300 Capitol Avenue
Fremont, CA 94538

City of San Jose
Department of Planning
Mr. Laurel Prevetti
LPrevetti@sanjoseca.gov
801 North First Street, Room 400
San Jose, CA 95110



Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the Regional Water Board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

Are there limits to what the Regional Water Board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

Revised January 2008

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov.



U S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona California
Hawaii Nevada Guam

201 Mission Street
Suite 1650
San Francisco CA 94105-1839
415-744-3133
415-744-2726 (fax)

John M. Fowler, Executive Director
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

JUL 09 2009

Re: Silicon Valley Rapid Transit Corridor Project

Dear Mr. Fowler:

Please let this letter serve as notification to the Advisory Council on Historic Preservation (ACHP) of the proposed Silicon Valley Rapid Transit Corridor Project's adverse effects on historic properties (36 CFR § 800.6(a)(1)). This letter is also an invitation to ACHP to participate in consultation and development of a Programmatic Agreement to establish measures to avoid, minimize, or mitigate the adverse effects on historic properties (36 CFR § 800.6(a)(1)(i)(C)).

The Santa Clara Valley Transportation Authority (VIA) proposes to construct the Silicon Valley Rapid Transit Corridor Project (SVRTC), an extension of the Bay Area Rapid Transit (BART) rail system from the approved BART Warm Springs Station in the City of Fremont, California, to the City of Santa Clara, California. The Federal Transit Administration (FTA) has authorized VIA to continue consultations with the State Historic Preservation Officer (SHPO) and ACHP. SVRTC is eligible to receive federal funding assistance from the FTA and is subject to federal regulatory requirements for cultural resources pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 USC 470), as amended; the implementing regulations of the Advisory Council on Historic Preservation (36 CFR Part 800); and cultural resource requirements of FTA.

In consultation with the FTA and the SHPO, VIA has identified historic properties that may be adversely affected by the three alternative projects evaluated in the Draft Environmental Impact Statement (EIS). Implementation of one of the alternatives, the Silicon Valley Rapid Transit Project (SVRTP), would have an adverse effect on the San Jose Downtown Commercial Historic District (Historic District) and the historic Santa Clara Depot (Depot). The Historic District was listed in the National Register of Historic Places in 1983 (NRIS 83003822). The Depot was listed in the National Register in 1985 (NRIS 85000359).

The Historic District would be affected by any of the station entrance options for the Downtown San Jose Station. Each option would require interior changes to contributing elements of the Historic District and alterations to the exteriors of the buildings. These project actions may change the physical features within the setting or the visual linkage to the Historic District and diminish the integrity of the Historic District. The Depot would be affected by the construction of a

pedestrian overcrossing at the new Santa Clara Station which would alter the relationship and linkage between the contributing elements of the Depot.

Adverse effects on prehistoric archaeological properties are also anticipated with the implementation of the Berryessa Extension Project (BEP) and SVRIP alternatives. Due to the scale of the two build alternatives and the sensitivity of the corridor for archaeological resources, it is reasonable to conclude that the build alternatives would have adverse effects on historic archaeological properties.

We are providing documentation as specified in 36 CFR §800.11(e) in the attached CD-ROM copy of the Draft Environmental Impact Statement for the SVRIC, specifically, the Executive Summary, Chapter 2, Alternatives, Chapter 4.4, Affected Environment – Cultural and Historical Resources; and Chapter 5.4, Environmental Consequences – Cultural and Historical Resources.

We request your comments on our determination of effect and notification of whether or not the ACHP will participate in consultation and development of the Programmatic Agreement.

If you have any questions or comments, please contact Eric Eidlin, FTA Community Planner, at (425) 744-2502 or Eric.Eidlin@dot.gov; or Lauren Bobadilla, VIA Environmental Planner, at (408) 321-5776 or lauren.bobadilla@vta.org

Sincerely,


for Leslie T. Rogers
Regional Administrator

cc by e-mail:
Tom Fitzwater, VIA
Milford Wayne Donaldson, California SHPO

Enclosure:
CD copy of the Silicon Valley Rapid Transit Corridor Draft Environmental Impact Statement and Draft Section 4(f) evaluation.



Preserving America's Heritage

July 29, 2009

Leslie T. Rogers
Regional Administrator
Federal Transit Administration-Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105-1839

Ref: *Proposed Silicon Valley Rapid Transit Corridor Project
Alameda and Santa Clara Counties, California*

Dear Ms. Rogers:

On July 14, 2009, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Programmatic Agreement (PA), developed in consultation with the California State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the PA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require further assistance, please contact Blythe Semmer at 202 606-8552 or via e-mail at bsemmer@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov



U.S. Department
of Transportation
**Federal Transit
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415-744-3133
415-744-2726 (fax)

Blythe Semmer, Program Analyst
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

JAN 14 2010

Re: ACHP Case #1934, Silicon Valley Rapid Transit
Corridor Project, FTA A040219A

Dear Ms. Semmer:

This letter provides an update of the Silicon Valley Rapid Transit Corridor (SVRTC) Project and invites the Advisory Council on Historic Preservation (ACHP) to comment on the updated project.

In a letter dated July 9, 2009, FTA invited ACHP to participate in consultation and development of a Programmatic Agreement relating to the SVRTC Project in Alameda and Santa Clara, California. On July 29, 2009, ACHP responded by email and letter to FTA and declined the invitation. ACHP concluded that Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking and that its participation in the consultation to resolve adverse effects is not needed. Copies of the letters are attached for your reference.

Since the July 2009 correspondence, FTA selected the Berryessa Extension Project (BEP) Alternative of the SVRTC Project as the locally preferred alternative and candidate for the New Starts funding program. The BEP Alternative would consist of the design, construction, and future operation of a 9.9-mile extension of the San Francisco Bay Area Rapid Transit (BART) heavy rail line from Fremont to San Jose. The other build alternative of the SVRTC Project, the one that was not selected, is the Silicon Valley Rapid Transit Project (SVRTP) Alternative which would extend the BART line 16.1 miles from Fremont, through San Jose, to Santa Clara. The first 9.9 miles of the 16.1-mile long SVRTP Alternative is the BEP Alternative.

The cultural resources reports, documentation, and consultation completed for the SVRTC Project included both the BEP and SVRTP alternatives, although the attention was directed to the SVRTP and the numerous impacts associated with the larger alternative. With the selection of the BEP as the locally preferred alternative, the focus now is on the project alternative with fewer impacts to cultural resources.

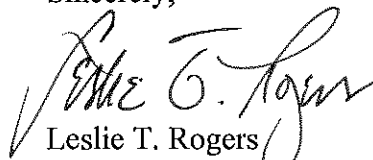
Unlike the SVRTP Alternative, the BEP Alternative would have no adverse effects on historic architectural properties as there are no resources eligible for listing on the National Register of

Historic Places within the area of potential effects (APE) for architecture. The archaeological APE for the BEP Alternative, however, does include 14 recorded archaeological sites or locations where archaeological remains are likely to be found. Portions of the APE include paved and built-over areas and areas of private land not accessible for cultural resources inventory, and areas with high potential for buried archaeological deposits that cannot be accurately located prior to construction. FTA has chosen to implement a phased process for identification, evaluation, and application of the criteria of adverse effect and execute a Programmatic Agreement for the purposes of Section 110(1) of the National Historic Preservation Act.

Now that the BEP Alternative has been selected as the locally preferred alternative, we again request your comments on our determination of effect and notification of whether or not ACHP will participate in consultation and development of the Programmatic Agreement.

If you have any questions, please contact Eric Eidlin, FTA Community Planner, at (415) 744-2502 or Eric.Eidlin@dot.gov ; or Lauren Bobadilla, VTA Environmental Planner, at (408) 321-5776 or lauren.bobadilla@vta.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie T. Rogers". The signature is fluid and cursive, with a large initial "L" and "R".

Leslie T. Rogers
Regional Administrator

cc by e-mail:
Tom Fitzwater, VTA

Enclosures:
July 9, 2009 letter from FTA to ACHP
July 29, 2009 letter from ACHP to FTA



Preserving America's Heritage

January 19, 2010

Mr. Leslie Rogers
Regional Administrator
Federal Transit Administration, Region IX
201 Mission St., Suites 1650
San Francisco, CA 94105-1839

RE: *FTA New Starts funding for Silicon Valley Rapid Transit Corridor
Fremont to San Jose, California*

Dear Mr. Rogers:

The Advisory Council on Historic Preservation (ACHP) recently received a letter from the Federal Transit Administration (FTA) providing us with new information about the selection of a preferred alternative for the referenced undertaking. Despite recent changes, FTA maintains its finding of adverse effect for the undertaking. We understand fewer historic properties are anticipated to be affected by the selected alternative than the larger corridor described in FTA's notification of July 9, 2009, per 36 CFR 800.6(a)(1). Accordingly, the ACHP continues to believe that our participation in consultation to develop a Programmatic Agreement (PA) is not necessary given the inapplicability of Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800).

Please ensure that all consulting parties are provided the new information regarding the preferred alternative and modified project plans. The final PA, developed in consultation with the California State Historic Preservation Officer (SHPO) and any other consulting parties, should be filed with the ACHP to complete the Section 106 process once executed.

Thank you for providing the ACHP with updated information about this undertaking. If you have any questions, please contact Blythe Semmer by telephone at (202) 606-8552 or by e-mail at bsemmer@achp.gov.

Sincerely,

Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing, and Assistance Section

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In reply refer to:
81420-2009-I-1296-1

JAN 29 2010

Mr. Leslie T. Rogers
Regional Administrator
Federal Transit Administration, Region 9
U.S. Department of Transportation
201 Mission Street, Suite 1650
San Francisco, California 94105-1839

Subject: Informal Consultation on the Proposed Silicon Valley Rapid Transit Corridor Project, Santa Clara and Alameda Counties, California

Dear Mr. Rogers:

This letter responds to your January 13, 2010, letter requesting informal consultation for the proposed Silicon Valley Rapid Transit Corridor Project, Santa Clara and Alameda Counties, California (proposed project). Your letter was received by us on January 15, 2010. At issue are the potential effects of the proposed project on the threatened California red-legged frog (*Rana aurora draytonii*) and the threatened California tiger salamander (*Ambystoma californiense*). This response is in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

The U.S. Fish and Wildlife Service (Service) used the following in our review of your request: 1) the September 2009 *Biological Assessment for the Silicon Valley Rapid Transit Corridor Project* (ICF Jones & Stokes 2009); 2) the Federal Transit Administration's (FTA) letter to the Service, dated January 13, 2010, requesting informal consultation for the proposed project (L. Rogers, FTA, *in litt.* 2010); 3) FTA's letter to the National Oceanographic and Atmospheric Administration/National Marine Fisheries Service, dated December 4, 2009, (Rogers *in litt.* 2009) requesting concurrence with a determination that the proposed project is not likely to adversely affect listed salmonids; 4) conversations with Ann Calnan (Santa Clara Valley Transportation Authority [VTA]) and Matthew Jones (ICF Jones & Stokes) regarding the proposed project (A. Calnan, VTA, pers. comm. 2009; M. Jones, ICF Jones & Stokes, pers. comm. 2009); and 5) other information available to the Service.

TAKE PRIDE[®]
IN AMERICA 

FTA is requesting informal consultation on two San Francisco Bay Area Rapid Transit (BART) extension alternatives proposed by VTA that would extend the BART from the planned Warm Springs Station in Fremont, Alameda County, south into the San Jose area of Santa Clara County. The shorter Berryessa Extension Project Alternative is a 9.9-mile, two-station extension to Milpitas and San Jose (just south of Mabury Road). The longer Silicon Valley Rapid Transit Project Alternative is a 16.1-mile, six-station extension to Santa Clara and includes a 5.1-mile-long subway tunnel through downtown San Jose. Any potential adverse effects of the proposed project would be minimized by using the existing railroad right-of-way, avoiding streams and riparian areas to the extent practicable, and limiting construction to paved or other disturbed urban areas.

The streams in the northern section of the proposed project corridor (both alternatives) are engineered flood control channels devoid of vegetation and would not support the California red-legged frog or the California tiger salamander. In the southern section of the proposed project corridor (the 16.1-mile alternative), impacts to riparian habitat along Coyote Creek, Los Gatos Creek, Lower Silver Creek, and the Guadalupe River would be avoided by maintaining a 100 – 150-foot buffer zone and tunneling under the streams.

Only at the Upper Penitencia Creek stream crossing, near the proposed Berryessa Station (both alternatives), would the proposed project disturb riparian habitat where two existing bridges, the existing Union Pacific Railroad crossing (18 feet wide) and an existing road east of the railroad corridor (70 feet wide), would be replaced to support the new BART aerial guideway (40 feet wide) and a new entrance to the proposed Berryessa Station (up to 106 feet wide) (Rogers *in litt.* 2010). The proposed widening of the bridges would result in the permanent loss of up to 58 linear feet (less than 0.5 acre) of riparian habitat along Upper Penitencia Creek (Rogers *in litt.* 2010). The riparian habitat that would be impacted, however, occurs in a highly urbanized area on the valley floor adjacent to the San Jose Flea Market (the largest open air market in the United States) (Jones, pers. comm. 2009). Thus, the riparian area is narrow, highly degraded, fragmented by bisecting roadways, heavily disturbed with substantial amounts of trash and anthropogenic ground disturbance from the local homeless population, and unlikely to support the California red-legged frog or the California tiger salamander (Jones, pers. comm. 2009). Riparian habitat field surveys conducted by the Service for the Upper Penitencia Creek Flood Control Project confirm that the riparian corridor within the proposed project area adjacent to the San Jose Flea Market is narrow, of lower quality, and unlikely to support the California red-legged frog (K. Turner, Service, pers. comm. 2009).

The closest known occurrence of the California red-legged frog to the proposed project site along the Upper Penitencia Creek is in the foothills at Alum Rock State Park about 4.5 miles upstream (California Department of Fish and Game [CDFG] 2009). The riparian corridor along Upper Penitencia Creek, however, is discontinuous between the project site and the transition to the foothills at Alum Rock State Park, three miles upstream of the project site (Jones, pers. comm. 2009). Thus, the reach of Upper Penitencia Creek within the project area is not likely to be a significant dispersal corridor for the California red-legged frog (Jones, pers. comm. 2009). There are no known occurrences of California red-legged frog or California tiger salamander on Upper

Penitencia Creek downstream of Interstate 680, which includes the project area (CDFG 2009; Jones, pers. comm. 2009). Therefore, it is unlikely that the California red-legged frog or the California tiger salamander occurs at the proposed project site along the Upper Penitencia Creek.

There are no known extant occurrences of the California tiger salamander or suitable breeding ponds within one mile of any segment of the proposed project corridor (Rogers *in litt.* 2010). The closest known occurrences of the California tiger salamander are located in the foothills east of Fremont and Interstate 680 (CDFG 2009), which acts as a significant barrier to the dispersal of California tiger salamander (Jones, pers. comm. 2009). The proposed project would not result in any disturbance of suitable upland (grassland) habitat for the California tiger salamander or the California red-legged frog. There is no suitable upland habitat beyond the narrow riparian corridor at the Upper Penitencia Creek crossing site because the paved surfaces of the San Jose Flea Market extend all the way to the riparian corridor (Jones, pers. comm. 2009).


VTA proposes the following conservation measures to avoid, minimize, and compensate for any impacts of the proposed project on the California tiger salamander and California red-legged frog (ICF Jones & Stokes 2009; Rogers *in litt.* 2010; Jones, pers. comm. 2009):

1. Avoiding impacts to streams and riparian areas during construction activities by maintaining a minimum 100-foot buffer (except where it cannot be avoided at the Upper Penitencia Creek crossing).
2. Limiting construction activities near potential California tiger salamander and California red-legged frog habitat to the dry season (June 1 – October 15) to the extent practicable. If any work remains to be completed after October 16, exclusion fencing will be placed in those areas where construction needs to be completed;
3. Compensating for any permanent loss of riparian habitat (i.e., Upper Penitencia Creek) at a 3:1 ratio (acres of habitat restored : acres of habitat lost) on-site by removing paved surfaces adjacent to the riparian corridor and restoring riparian vegetation within the designated 100-foot riparian buffer zone.
4. Conducting preconstruction surveys for the California tiger salamander and California red-legged frog near potential habitat;
5. Implementing measures to avoid entrapment of the California red-legged frog and the California tiger salamander;
6. Educating and informing contractors involved in the proposed project about the required avoidance and minimization measures;
7. A Service-approved biologist will monitor construction activities in and near potential California tiger salamander and California red-legged frog habitat. If a California tiger salamander or California red-legged frog is found, then all construction activities will cease until the Service and CDFG are consulted, and those agencies determine when construction may continue; and
8. Avoiding impacts to potential upland habitat for California red-legged frog and California tiger salamander.

Based on the limited amount of riparian habitat that would be impacted by the proposed project, the lack of suitable habitat and its occurrence in a highly urbanized setting, the lack of

occurrences of the California red-legged frog and California tiger salamander near the proposed project area, and the lack of suitable upland habitat within the proposed project corridor, the Service concurs that the proposed project is not likely to adversely affect the California red-legged frog or the California tiger salamander. Therefore, unless new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered, or a new species is listed, no further action pursuant to the Act is necessary. Please contact Joseph Terry, Senior Biologist, or Ryan Olah, Coast/Bay Branch Chief, at (916) 414-6600, if you have any questions regarding this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Cay C. Geude". The signature is written in a cursive style with a large, looping initial "C".

Cay C. Geude
Assistant Field Supervisor

cc:

Ann Calnan, Santa Clara Valley Transportation Authority, San Jose, CA

LITERATURE CITED

- California Department of Fish and Game (CDFG). 2009. California Natural Diversity Database (CNDDDB) RAREFIND. Natural Heritage Division, Sacramento, California.
- ICF Jones & Stokes. 2009. Biological Assessment for the Silicon Valley Rapid Transit Corridor Project. September. Prepared for Santa Clara Valley Transportation Authority, San Jose, California.

in litt. References

- Rogers, Leslie T. 2009. Regional Administrator, U.S. Department of Transportation, Federal Transit Administration, San Francisco, California. Letter addressed to Gary Stern, San Francisco Bay Regional Team Leader, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, Protected Resources Division, Sacramento, California, dated December 4, 2009. Subject: Informal Endangered Species Consultation on the Silicon Valley Rapid Transit Corridor Project.
- Rogers, Leslie T. 2010. Regional Administrator, U.S. Department of Transportation, Federal Transit Administration, San Francisco, California. Letter addressed to Joseph Terry, Senior Biologist, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Endangered Species Division, Coast/Bay Branch, Sacramento, California, dated January 13, 2010. Subject: Informal Endangered Species Consultation on the Silicon Valley Rapid Transit Corridor Project.

Personal Communications

- Calnan, Ann. Environmental Planner, Santa Clara Valley Transportation Authority, San Jose, California. Telephone calls and e-mail exchanges with Joseph Terry, Senior Biologist, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Endangered Species Division, Coast/Bay Branch, Sacramento, California, December 4, 2009 – January 13, 2010.
- Jones, Matthew. Project Manager, ICF Jones & Stokes, San Jose, California. Telephone calls and e-mail exchanges with Joseph Terry, Senior Biologist, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Endangered Species Division, Coast/Bay Branch, Sacramento, California, December 21, 2009 – January 13, 2010.
- Turner, Kim. Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California, December 22, 2009.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

February 12, 2010

In response refer to:
2009/06580

Leslie T. Rogers
Regional Administrator
Federal Transit Administration, Region 9
U.S. Department of Transportation
201 Mission Street, Suite 1650
San Francisco, California 94105-1839

Dear Mr. Rogers:

Thank you for your letter of December 4, 2009, requesting the initiation of consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act of 1973 (ESA), as amended, for the proposed Silicon Valley Rapid Transit Corridor Project. This letter also serves as consultation under the authority of and in accordance with the provisions of the Fish and Wildlife Coordination Act of 1934 (FWCA), as amended. The Federal Transit Administration (FTA) in coordination with Santa Clara Valley Transportation Authority (VTA) proposes to extend San Francisco Bay Area Rapid Transit (BART) service in Santa Clara County.

NMFS has reviewed the information provided in your December 4, 2009, letter and the project's Biological Assessment and Essential Fish Habitat Assessment dated September 2009. Additional information regarding the project was provided at the January 8, 2010 meeting with VTA at the NMFS Santa Rosa Area Office and via email correspondence during January and February 2010. FTA has proposed two alternatives to extend service in the Silicon Valley Rapid Transit Corridor. The Berryessa Extension Alternative would extend BART for an additional 9.9 miles with two new stations at Milpitas and San Jose (Berryessa Road). The Silicon Valley Rapid Transit Alternative would extend BART an additional 16.1 miles with six new stations. Both alternatives cross Upper Penitencia Creek at the location of the Berryessa Station in San Jose.

The proposed project design avoids and minimizes environmental impacts to steelhead and Chinook salmon at all four salmonid stream crossings. Impacts to the streamside riparian zone and river channel will be avoided at three crossings (Coyote Creek, Guadalupe River, and Los Gatos Creek) through the use of underground tunnels. The BART tracks will be constructed in sub-surface tunnels under these three streams and all facilities associated with the tunnels (*i.e.*, ventilation, underground stations, portals) will be located away from the stream and outside the existing streamside riparian zone. At the Berryessa Station along Upper Penitencia Creek, all



new facilities will be located away from the stream and outside the existing riparian zone. Two new bridges, the BART aerial guideway and the Berryessa Station Way Bridge, would be constructed over Upper Penitencia Creek and these bridge spans would clear the existing active stream channel. In anticipation of the Santa Clara Valley Water District's (SCVWD) future flood control project for Reach 1 of Upper Penitencia Creek, the Berryessa Station facilities are setback to accommodate a widened floodplain alternative. The location of the proposed Berryessa Station facilities will provide a stream corridor along Upper Penitencia Creek of sufficient width to allow for channel restoration, habitat enhancements, widened riparian zone, and conveyance of the 100-year flood flow. At this time, the proposed FTA/VTA project does not include these stream channel restoration components, but the Berryessa Station facilities will be situated in a manner that allows for the future construction of the flood project and stream habitat enhancements. If FTA and/or VTA propose to include stream restoration work at this location as part of this project, NMFS will be notified and this consultation will be reinitiated, as appropriate.

To minimize impacts during project construction, the project proposes to restrict all construction activities within 200 feet from the top of bank of Upper Penitencia Creek and Coyote Creek to the period between June 1 and October 15. Proposed best management practices include avoidance of riparian and wetland vegetation, covering bare areas with mulch, revegetation, and establishing spill-prevention and countermeasures plans.

FTA has requested NMFS' concurrence with their finding that the proposed project is not likely to adversely affect ESA-listed fish species or designated critical habitat.

Endangered Species Act

Available information indicates that threatened Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) and their designated critical habitat occur in the project's action area. The life history of steelhead is summarized in Busby *et al.* (1996). The project alternatives include crossings over and under four steelhead streams: Upper Penitencia Creek, Coyote Creek, Guadalupe River and Los Gatos Creek. The crossings are all located in the lowermost reaches of these four streams in areas that generally function as migration corridors for CCC steelhead. Steelhead spawning and rearing occurs upstream of these crossings in areas with perennial stream flow and higher quality habitat. Steelhead pass through the project areas as downstream migrating smolts (*i.e.*, juveniles) on their way to the ocean or as adults traveling upstream to spawn. Their migrations generally take place in the winter and spring months. The proposed construction window of June 1 to October 15 for areas within 200 feet of the streams avoids the migration period of CCC steelhead.

NMFS has evaluated the proposed project for potential adverse effects to CCC steelhead and designated critical habitat. At Coyote Creek, Guadalupe River, and Los Gatos Creek, the proposed project is expected to avoid adverse effects to steelhead and habitat with the use of underground tunneling. Twin bore tunnels would be excavated underneath the riparian zones and stream channels at these three locations and no heavy equipment would be operated in or near the water. Tunnel boring would be performed completely under the waterbodies and not affect water quality, stream banks, or streamside vegetation.

At Upper Penitencia Creek, no new facilities will be constructed within the existing active stream channel. The footings for the two new Berryessa Station bridges will be located outside the wetted channel and will not impact existing streamside riparian vegetation. Construction activities within Upper Penitencia Creek will be limited to demolition of an existing double box culvert vehicular bridge and two wooden piers at the existing Union Pacific Railroad (UPRR) trestle over the creek. The UPRR wooden trestle will be replaced by the new BART aerial guideway.

Work in and adjacent (within 200 feet of top of bank) to Upper Penitencia Creek would be limited to the period between June 1 and October 15 when the natural hydrology of the region creates seasonally dry conditions at the project site. However, during the past 8-10 years, the SCVWD's groundwater recharge program has periodically created artificial summer flow conditions at this site through the discharge of imported water supplies. At the request of NMFS, the SCVWD has agreed to manage their releases of imported water to avoid creating dry season flows in this lowermost reach of Upper Penitencia Creek. In the future, it is expected that the SCVWD will be managing their water recharge operations to mimic natural hydrology in this reach of Upper Penitencia Creek and the project site will be dry during the period between June 1 and October 15. Therefore, equipment used for bridge demolition will not enter the waters of Upper Penitencia Creek, because the work area is expected to be dry during the construction window. Sediment/erosion control measures are expected to effectively prevent the introduction of sediment and contaminants into the stream channel. When project construction is completed, the new clear-span bridges will improve conditions for the migration of CCC steelhead and the setback Berryessa Station facilities will allow for future stream channel and habitat restoration. Overall, the direct effects of project construction are expected to be minor, short-term, and insignificant. Following construction, no on-going impacts to listed steelhead are expected from this project.

Primary constituent elements (PCEs) of designated critical habitat for steelhead in the action area include water quality and quantity, foraging habitat, natural cover including large substrate and aquatic vegetation, and migratory corridors free of obstructions. Potential effects to designated critical habitat are short-term disturbance of the stream bank and bed during bridge demolition activities on Upper Penitencia Creek. As described above, the project's construction-related effects are minimal and discountable, because the site will be seasonally dry. The contemporary alignment and narrow riparian corridor of Upper Penitencia Creek through the project area is the result of a manmade creek diversion channel originally constructed in 1852 (Grossinger *et. al* 2006). Under present conditions, the stream channel and adjacent riparian corridor offer limited habitat value to CCC steelhead. The proposed project will benefit Upper Penitencia Creek by removing several structures including bridges that constrict the existing channel. The setback placement of the project's Berryessa Station facilities will allow for future floodplain restoration and a widened riparian corridor. Overall, the proposed project is expected to benefit designated critical habitat for CCC steelhead in Upper Penitencia Creek by removing existing in-stream and near-stream manmade structures. No ongoing impacts to designated critical habitat are expected following project construction.

Based upon our review of the best available information, NMFS concurs with FTA's determination that the proposed project is not likely to adversely affect CCC steelhead or

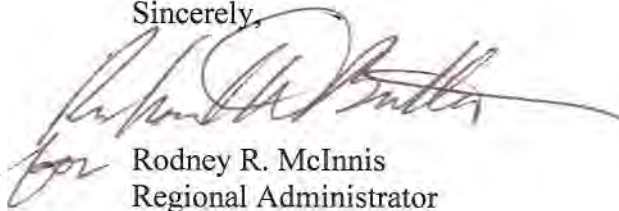
designated critical habitat for this species. This concludes informal consultation for the proposed Silicon Valley Rapid Transit Corridor Project in Santa Clara County, California in accordance with 50 CFR §402.13(a). However, further consultation may be required if: (1) new information becomes available indicating that listed species or critical habitat may be affected by the project in a manner or to an extent not previously considered; (2) current project plans change in a manner that causes an effect to listed species or critical habitat in a manner not previously considered; (3) a new species is listed or critical habitat designated that may be affected by the action; (4) FTA or VTA propose instream restoration work in Upper Penitencia Creek; or (5) the project site at Upper Penitencia Creek contains flowing water during the construction window.

Fish and Wildlife Coordination Act (FWCA)

The purpose of the Fish and Wildlife Coordination Act (FWCA) is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development [16 U.S.C. 661]. The FWCA establishes a consultation requirement for federal departments and agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage [16 U.S.C 662(a)]. Consistent with this consultation requirement, NMFS provides recommendations and comments to federal action agencies for the purpose of conserving fish and wildlife resources. NMFS has no FWCA recommendations to provide for this project, because the impacts are expected to be minor, temporary, and beneficial.

If you have questions concerning these comments, please contact Gary Stern at (707) 575-6060.

Sincerely,



Rodney R. McInnis
Regional Administrator

cc: Ann Calnan, VTA, San Jose, CA
Copy to File ARN #151422SWR2009SR00576

Literature Cited

- Busby, P.J., T.C. Wainwright, G.J. Bryant, L. Lierheimer, R.S. Waples, F.W. Waknitz, and I.V. Lagomarsino. 1996. Status review of West Coast steelhead from Washington, Idaho, Oregon and California. United States Department of Commerce, National Oceanic and Atmospheric Administration Technical Memorandum NMFS-NWFSC-27. 261 pages.
- Grossinger, R.M., R.A. Askevold, C.J. Striplen, E Brewster, S. Pearce, K.N. Larned, LJ McKee, and JN Collins, 2006. Coyote Creek Watershed Historical Ecology Study: Historical Condition, Landscape Change, and Restoration Potential in the Eastern Santa Clara Valley, California. Prepared for the Santa Clara Valley Water District. A Report of SFEI's Historical Ecology, Watersheds, and Wetlands Science Programs, SFEI Publication 426, San Francisco Estuary Institute, Oakland, CA.