Appendix C Agency Concurrence Letters

This appendix contains the following Agency Concurrence Letters:

1. Concurrence on LEDPA from the US Environmental Protection Agency (***May 25, 2005***)

2. Concurrence on LEDPA from the US Army Corps of Engineers (***June 10, 2005***)

3. Concurrence on Conceptual Mitigation Plan from US Environmental Protection Agency (***June 23, 2006***)

4. Concurrence on Conceptual Mitigation Plan from US Army Corps of Engineers (***July 21, 2006***)

5. Concurrence on Conceptual Mitigation Plan from US Fish & Wildlife Service (***August 2,2006***)

6. Concurrence on Conceptual Mitigation Plan from National Marine Fisheries Service (***August 14, 2006***)

7. Concurrence on Section 106 compliance from the State Historic Preservation Officer (***December 6, 2005***)

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

May 25, 2005

Jeremy Ketchum, Branch Chief
Office of Environmental Management
Caltrans District 3
2389 Gateway Oaks Drive
Sacramento, CA 95833

Subject: Concurrence on the Least Environmentally Damaging Practicable Alternative for U.S. 101 Willits Bypass Project in Mendocino County, California

Dear Mr. Ketchum:

We are writing in response to your letter of April 7, 2005, requesting EPA's concurrence on the Least Environmentally Damaging Practicable Alternative (LEDPA) for the above-referenced project. This request is pursuant to Appendix A of the National Environmental Policy Act/Clean Water Act Section 404 Integration Process Memorandum of Understanding for Surface Transportation Projects (NEPA/404 MOU).

Based on our review of the Final Alternatives Analysis (Analysis) dated April 2005, and our participation in numerous interagency meetings during the past decade, we concur that Modified Alternative J1T is the LEDPA. While the proposed construction of the Willits Bypass on this alignment would result in significant direct losses of wetlands (approximately 64 acres) in the Willits Little Lake Valley, the transportation, resource, and regulatory agencies have formulated an alternative that meets the proposed project's overall purpose while avoiding and minimizing adverse direct, secondary, and cumulative impacts to the aquatic ecosystem (40 CFR Part 230).

The Analysis summarizes the detailed process undertaken by Caltrans, the Federal Highway Administration (FHWA) and the federal resource and regulatory agencies to evaluate potential alternatives for the Willits Bypass. It accurately describes EPA's concurrence on project purpose and need, the range of alternatives, and our agreement to eliminate certain alternatives from further consideration. For the six build alternatives evaluated, the Analysis presents adequate information at an appropriate level of detail to enable us to identify Modified Alternative J1T as the LEDPA.

Each of the six build alternatives is practicable, therefore, we focused our review on which of these alternatives is the least environmentally damaging. Our finding was informed by the information presented in Table ES-1, Table 7-3, and Appendix B. Alternative E3 would have

significant adverse impacts to water quality and anadromous fish habitat, and these impacts preclude its determination as the LEDPA, despite the relatively few direct impacts on jurisdictional waters. Furthermore, compared to Alternative J1T and Modified Alternative J1T, Alternatives C1T, L/C, and LT would have significantly greater direct, secondary, and cumulative adverse impacts on wetlands and riparian resources, and this precludes their determination as the LEDPA.

Modified Alternative J1T would impact a larger area of meadow wetlands than would Alternative J1T, and would have a somewhat greater areal impact on wetlands overall. However, Alternative J1T would impact more acres of riparian resources than Modified Alternative J1T. Riparian wetlands are regionally-limited and difficult to replace. Therefore, we conclude that Modified Alternative J1T is less damaging to the aquatic ecosystem than Alternative J1T because Modified J1T has fewer adverse impacts on valuable riparian resources, even though it has relatively greater direct adverse impacts on the meadow wetlands occurring on the Valley floor.

In identifying Modified Alternative J1T as the LEDPA, the Analysis emphasized the adverse effects of Alternative J1T on human community resources. We recognize the need to consider these adverse effects in the context of NEPA; however, our determination that Modified Alternative J1T is the LEDPA is based primarily on a comparative evaluation of each alternative with respect to potential adverse impacts on the aquatic ecosystem.

The next step in the NEPA/404 MOU process is for FHWA to request concurrence from EPA, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service on the conceptual mitigation plan and implementation schedule for this project. We commend Caltrans for having initiated interagency discussions regarding compensatory mitigation. We recognize that due to the magnitude of impacts to waters of the U.S., including wetlands, the compensatory mitigation requirements for this project will be significant. We look forward to continue working with you and the other agencies to address these important mitigation requirements. We are also available to review draft work products or to meet with you to ensure that the final mitigation plan satisfies these commitments and addresses all pertinent issues.

We appreciate the opportunity to participate in the NEPA/404 MOU process for this project. If you have any questions, please contact Michael Monroe of EPA's Wetlands Regulatory Office at (415) 972-3453 or Nancy Levin of my staff at (415) 972-3848.

Sincerely,

Nova Blazej, Acting Manager
Environmental Review Office

cc. Maiser Khaled, Federal Highway Administration
Jane Hicks, U.S. Army Corps of Engineers, San Francisco
Catherine Kuhlman, North Coast Regional Water Quality Control Board, Santa Rosa
Mike Long, U.S. Fish and Wildlife Service, Arcata
Gary Stern, National Marine Fisheries Service, Santa Rosa
Robert Floerke, California Department of Fish and Game, Yountville

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

REPLY TO

Regulatory Branch

SUBJECT: File No. 194740N

Mr. Jeremy Ketchum
California Department of Transporation
District 3 North Region
Office of Environmental Management
2389 Gateway Oaks Drive
Sacramento, California 95833

Dear Mr. Ketchum:

This is in reply to your letter of April 7, 2005, requesting Corps of Engineers' (Corps) concurrence on the Least Environmentally Damaging Practicable Alternative (LEDPA) for the State Highway 101 Willits By-Pass Project, located in Little Lake Valley, Mendocino County, California. This request was made pursuant to the Section 404(b)(1) Guidelines of the Clean Water Act (33 U.S.C. § 1344) and the "Memorandum of Understanding for the NEPA and Section 404 Integration Process for Surface Transportation Projects in Arizona, California, and Nevada" (NEPA/Section 404 MOU).

By letter of October 15, 2003, the Corps acknowledged that the Modified Alternative J1T may potentially qualify as the LEDPA, pending receipt of an updated alternatives analysis. With the recent completion and confirmation of the jurisdictional delineation for the Modified Alternative J1T study area alignment and review of the Final Alternatives Analysis (April 2005), the Corps concurs with your agency's selection of the Modified Alternative JIT as the project LEDPA. The LEDPA determination now enables your agency to initiate Section 7 consultation on project related impacts to federally listed threatened and endangered species and to eventually complete and circulate the Final EIS/EIR document for the project.

While the Modified Alternative J1T would result in the permanent loss of approximately 64 acres of jurisdictional wetland habitat and a temporary loss of similar wetland acreage during a three- to five-year project construction period, this alternative generally reduces adverse impacts to aquatic and other environmental resources compared to the other practicable alternatives analyzed in the Final Alternatives Analysis. Alternative J1T would impact a somewhat smaller acreage of jurisdictional wetland habitat but a larger acreage of riparian habitat that provides high resource values difficult to replace in Little Lake Valley, while displacing a business park and altering a recreational complex. Alternatives C1T, L/C, and LT would displace a substantially larger acreage of jurisdictional wetland and riparian habitats. Alternative E3 would displace a small acreage of jurisdictional wetland habitat, while causing significant

adverse direct and indirect impacts to water quality, federally listed threatened salmonid fish species, and designated and proposed critical habitat for salmonids.

The Corps recognizes that Table 8-1 in the Final Alternatives Analysis depicts estimated jurisdictional wetland acreages permanently and temporarily impacted by the Modified Alternative J1T, based on the current level of design detail. The Corps encourages your agency to revise this table as the project design is refined and more precise information becomes available on pier and abutment sizing, spacing, and locations, and on other project elements constituting regulated fill material discharges into waters of the United States. The revised table should be included with an amended Department of the Army permit application for the LEDPA project design. An amended permit application should be submitted to the Corps after completion of the overall NEPA/CEQA review process.

The NEPA/404 MOU process next calls for the development of a conceptual mitigation plan that addresses how unavoidable project related impacts to aquatic and other environmental resources would be further minimized and compensated for through habitat restoration, creation, enhancement, and preservation. The conceptual mitigation plan will be included as an appendix to the Final EIS/EIR document. Given the magnitude of impact to aquatic resources associated with the Modified Alternative J1T, the Corps further recognizes that the identification of suitable mitigation sites in Little Lake Valley will be a daunting task to resolve, requiring a cooperative approach and intense effort by the involved resource agencies. The resolution of this issue will be critical to the Corps' ultimate public interest review for the project and compliance determination for the Section 404(b)(1) Guidelines.

You may refer any questions on this matter to Mr. Peter Straub of my staff by telephone at 415-977-8443 or by e-mail at peter.s.straub@spd02.usace.army.mil. Any correspondence should be addressed to the Regulatory Branch, North Section, referencing the file number at the head of this letter.

Sincerely,

Jane M. Hicks

Jane M. Hicks
Chief, Regulatory Branch

Copies Furnished:

US FHWA, Sacramento, CA
US EPA, San Francisco, CA
US FWS, Arcata, CA
US NMFS, Santa Rosa, CA
CA DFG, Yountville, CA
CA RWQCB, Santa Rosa, CA

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

June 23, 2006

Chris Collison
Senior Resource Biologist
North Region Office of Environmental Services
California Department of Transportation
2389 Gateway Oaks Drive
Sacramento, CA 95833

Subject: Concurrence on the Conceptual Mitigation Plan for the U.S.101 Willits Bypass Project, Mendocino County, California

Dear Mr. Collison:

We are writing in response to your April 25, 2006 letter requesting EPA's concurrence on the Conceptual Mitigation Plan for the Willits Bypass Project. Your request was made pursuant to Appendix A of the 1994 National Environmental Policy Act/Clean Water Act (CWA) Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU).

We have reviewed the April 19, 2006 conceptual mitigation plan and we concur that the plan establishes an appropriate framework to mitigate unavoidable project impacts to waters of the United States, including wetlands. We commend Caltrans for establishing a collaborative, interagency process for development of the conceptual mitigation plan and we look forward to working with you and the other resource agencies as this project moves toward the CWA Section 404 permitting stage.

In discussing the conceptual mitigation plan with the other state and federal resource agencies that have been involved for many years in the Willits Bypass Project, we note that there are divergent opinions regarding the adequacy of some plan components. For example, representatives of the California Department of Fish and Game and the North Coast Regional Water Quality Control Board have informed us that they would prefer a 2:1 mitigation ratio for permanent project impacts to all wet meadow wetlands, regardless of the presence or absence of special status plant species. These agencies, which are not signatories to the NEPA/404 MOU, may have other concerns as well, and we are available to further discuss any issues that may arise during the preparation of the final mitigation, monitoring, and long-term management plans.

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We appreciate the opportunity to participate in the NEPA/404 MOU process. When the final environmental document is released for public review, please send two copies to the address above (mail code: CED-2). If you have any questions, please contact Michael Monroe of EPA's Wetlands Regulatory Office at 415-972-3453 or monroe.michael@epa.gov, or Nancy Levin of my staff at 415-972-3848 or levin.nancy@epa.gov.

Sincerely,

for Duane James, Manager
Environmental Review Office

cc: Lahn Phan, Federal Highway Administration
Pete Straub, U.S. Army Corps of Engineers
Ray Bosch, U.S. Fish and Wildlife Service
Tom Daugherty, National Marine Fisheries Service
Corinne Gray, California Department of Fish and Game
Dean Prat, North Coast Regional Water Quality Control Board

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

JUL 2 1 2006

REPLY TO

Regulatory Branch

SUBJECT: File No. 194740N

Mr. Chris Collison
Senior Resource Biologist
California Department of Transportation
North Region Environmental Branch
2389 Gateway Oaks Drive
Sacramento, California 95833

Dear Mr. Collison:

This is in reply to your letter of April 25, 2006, requesting our agency's approval of the *Conceptual Mitigation Plan for the Willits Bypass Project*, dated April 2006. This request was made to promote conformance with Appendix A of the Memorandum of Understanding for the NEPA and Section 404 Integration Process for Surface Transportation Projects in Arizona, California, and Nevada (NEPA/Section 404 MOU).

We have reviewed the Conceptual Mitigation Plan and have determined that it reasonably incorporates our prior comments of January 30, 2006. We therefore concur that the Conceptual Mitigation Plan establishes an appropriate methodology and framework for identifying specific compensatory mitigation to offset unavoidable impacts to waters of the United States attributed to construction of the Modified Alternative J1T for the Bypass Project.

It is our understanding that the Conceptual Mitigation Plan will be now included as an Appendix to the Final EIR/EIS for the Bypass Project; the Final EIR/EIS may be available for public review and comment in the next several weeks or months. Upon completion of the overall NEPA process, detailed design development documents, and other biological field surveys, a Final Mitigation and Monitoring Plan will be prepared and submitted to the Corps and other resource agencies for review and approval to facilitate completion of the regulatory and other permitting processes. The Final Mitigation and Monitoring Plan will identify specific acquisition sites within Little Lake Valley for wetland restoration, creation, and preservation purposes.

You may refer any questions on this matter to Mr. Peter Straub of my staff by telephone at 415-977-8443 or by e-mail at peter.s.straub@spd02.usace.army.mil. All correspondence should be addressed to the Regulatory Branch, North Section, referencing the File Number at the head of this letter.

Sincerely,

Jane M. Hicks

Jane M. Hicks
Chief, Regulatory Branch

Copies Furnished:

US FHWA, Sacramento, CA (Lahn Phan)
US EPA, San Francisco, CA (Mike Monroe)
US FWS, Arcata, CA (Ray Bosch)
US NMFS, Santa Rosa, CA (Tom Daugherty)
CA DFG, Yountville, CA (Corinne Gray)
CA RWQCB, Santa Rosa, CA (Dean Prat)

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arcata Fish and Wildlife Office
1655 Heindon Road
Arcata, CA 95521-5582
Phone: (707) 822-7201 Fax: (707) 822-8411

In Reply Refer To:
File #: 1-14-1998-0095.7

AUG 2 2006

Chris Collison
Senior Resource Biologist
North Region Office of Environmental Services
California Department of Transportation
2389 Gateway Oaks Drive
Sacramento, CA 95833

Dear Mr. Collison:

Subject: Concurrence on the Conceptual Mitigation Plan for the U.S. 101 Willits Bypass Project, Mendocino County, California (01-Men-101 Willits Bypass Project; EA 01-262000)

This letter is in reply to your written correspondence of April 25, 2006, requesting concurrence by the U.S. Fish and Wildlife Service (Service) on Caltrans' final Conceptual Mitigation Plan for the Willits Bypass Project, located on Route 101 near Willits, in Mendocino County, California. Your request was made pursuant to the 1994 National Environmental Policy Act (NEPA)/Clean Water Act (CWA) Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU).

The Service has reviewed the April 19, 2006, conceptual mitigation plan and we concur that the plan describes an appropriate framework to mitigate and compensate unavoidable project impacts to waters of the U.S., including wetlands. The collaborative, interagency process initiated by Caltrans for discussion and planning of the conceptual mitigation plan helped to focus this effort on the most significant issues and mitigation opportunities related to wetland impacts, and provided an environment wherein the agencies could identify and agree upon a mitigation approach that has a high probability of success. We look forward to working with you and the other resource agencies as this project moves toward the CWA Section 404 permitting stage.

There are ongoing discussions within some agencies regarding the appropriate mitigation ratios for permanent project impacts to wet meadow wetlands. Should Caltrans need to pursue further Service involvement in this issue, we are available to discuss the matter during the preparation of the final mitigation, monitoring, and long-term management plans.

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We appreciate the opportunity to participate in the NEPA/404 MOU process. We look forward to the final environmental documents when they are released to the public. Please direct any questions or requests for additional information to Ray Bosch at (707) 822-7201 or via email at ray.bosch@fws.gov.

Sincerely,

Michael M. Long
Field Supervisor

cc:
Federal Highway Administration, Sacramento, California (Attn: Lahn Phan)
Environmental Protection Agency, San Francisco (Attn: Mike Monroe)
Army Corps of Engineers, San Francisco (Attn: Peter Straub)
National Marine Fisheries Service, Santa Rosa (Attn: Tom Daugherty)
California Department of Fish and Game, Yountville (Attn: Corinne Gray)
California Regional Water Quality Control Board, Santa Rosa (Attn: Dean Pratt)

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

AUG 14 2006

In response refer to:
2005/07370:TKD

Mr. Chris Collison
Senior Resource Biologist
California Department of Transportation
2389 Gateway Oaks Drive
Sacramento, CA 95833

Dear Mr. Collison:

This letter is in response to your April 25, 2006, written correspondence requesting National Marine Fisheries Service (NMFS) approval of the *Conceptual Mitigation Plan for the Willits Bypass Project*, dated April 19, 2006 (*CMP*). NMFS has reviewed the *CMP* and generally agreed with the approach, and methods described in the plan. It is our understanding that specific details for fisheries and riparian habitat success criteria and monitoring (Chapter 6 of the *CMP*) in the final mitigation plan will be determined with NMFS input.

As part of the proposed Willits Bypass Project, the *CMP* was considered in the development of the Draft Biological Opinion (DBiOP). Therefore, NMFS considers the proposed *CMP* as the minimum level of mitigation for consistency with the analysis in the DBiOP. If the final mitigation plan includes decreased mitigation for riparian or fisheries resources, NMFS may require FHWA and Caltrans to reinitiate interagency consultation for the Willits Bypass Project.

If you have any questions or concerns regarding this letter, please contact Mr. Thomas Daugherty at (707) 575-6097.

Sincerely,

Dick Butler
Santa Rosa Area Office Supervisor
Protected Resources Division

cc: Russ Strach, NMFS Assistant
Lanh Phan, Federal Highway Administration

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION
P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov

December 6, 2005

In Reply Refer To: FHWA000717A

Gene K. Fong
Division Administrator
U.S. Department of Transportation
Federal Highway Administration, California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Dear Mr. Fong:

Re: HAD-CA File #01-Men-101 K.P. 70.0/82.6 (PM 43.5/51.3) Willits Bypass Project EA 01-262000 Document # P53417.

You are continuing consultation with me regarding the above noted undertaking pursuant to 36 CFR § 800 (as amended 8-05-04) regulations implementing Section 106 of the National Historic Preservation Act. This aspect of the Willits Bypass Project undertaking focuses on the Modified Alternative J1T alignment and the additional studies completed on four archeological sites in the project APE, the National Register of Historic Places (NRHP) eligibility for those properties, and the determination of a finding of effect. In addition to your letter of November 7, 2005, you have submitted the following documents for my review:

- *Supplemental Historic Property Survey Report Willits Bypass Project: Site Evaluations, Finding of Effect, ESA Action Plan 03-Men-101 Willits Bypass Project EA 03-262000 PM 43.5/51.3 (KP 70.0/82.6)* (S.A. Williams, Caltrans District 3-Marysville: September 2005).

- *Phase II Investigation At Historic Archaeological Site CA-MEN-2618H (Branscomb Ranch) On State Route 101, Willits, Mendocino County 101 KP T70.0 and 82.6 (PM 42.1 and 51.3) EA: 01-262000, Contract No. 03A0574, Task Order 9, Amendment* 1 (K.M. Bartoy & R.J. Jackson, Pacific Legacy, Inc.: May 2005).

- *Phase II Investigations At CA-MEN-2645/H, CA-MEN-3037H, and CA-MEN-3190H on State Route 101, Willits, Mendocino County 01-MEN-101 KP T70.0 and 82.6 (PM 42.1 and 51.3) EA: 01-262000, Contract No. 03A0574, Task Order 9, Amendment 1* (H.S. Ballard, T. Fernandez, M.R. Bever, & R. Jackson: Pacific Legacy, Inc.: September 2004).

After reviewing your letter of November 7, 2005, and the documentation submitted in support of this undertaking, I have the following comments:

Received
DEC 12 2005
FHWA

1) I concur that the documentation submitted for this undertaking is adequate regarding the identification and evaluation of historic properties pursuant to 36 CFR § 800.4.

2) I further concur that archeological site CA-MEN-2645/H is eligible for the NRHP under criterion D.

3) CA-MEN-3111H, the Northwestern Pacific Railroad, has been previously determined eligible for the NRHP under criteria A and C in an earlier consultation for this undertaking (SHPO letter of August 17, 2000).

4) I further concur that the following archeological sites are *not* eligible to the NRHP.

- CA-MEN-2618H
- CA-MEN-3057H
- CA-MEN-3190H

5) I further concur that the finding of No Adverse Effect with conditions is appropriate pursuant to 36 CFR § 800.5(b), with the implementation of the conditions outlined in: *Finding of Conditional No Adverse Effect/ESA Action Plan 03-Men-101 Willits Bypass Project EA 03-262000 PM 43.5/51.3 (KP 70.0/82.6)* (S.A. Williams, Caltrans District 3: September 2005).

Thank you for seeking our comments and for considering historic properties in planning your project. If you require further information, please contact William Soule at phone 916-654-4614 or email wsoule@parks.ca.gov.

Sincerely,

Stephen D. Mikesell for

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer