

Stan Tidman

From: Gary.Sweeten@dot.gov
Sent: Tuesday, August 18, 2009 2:16 PM
To: Stan Tidman
Subject: FW: Draft letter requesting LEDPA and Mitigation Framework concurrence
Attachments: placer parkway concurrence 8-11.doc; Mitigation framework 08 11 09.doc; Placer Parkway easement term sheet - revised 08 05 09.doc

From: Sweeten, Gary (FHWA)
Sent: Thursday, August 13, 2009 12:27 PM
To: Nancy.A.Haley@usace.army.mil; mulvihill.carolyn@epa.gov; Dunning.Connell@epamail.epa.gov; brush.jason@epa.gov
Cc: Chris.Collison@dot.ca.gov; Steve Propst; Laura Walsh; Celia McAdam; Denise_Heick@URSCorp.com; Steve_Leach@URSCorp.com; LClark@placer.ca.gov; Michelle_Tovar@fws.gov; jana_milliken@fws.gov; smith.davidw@epa.gov; Bobo, Karen (FHWA)
Subject: Draft letter requesting LEDPA and Mitigation Framework concurrence

Attached is a draft of the letter and attachments. Please let me know if there are any questions or comments.

If you have any comments or corrections on the minutes from the August 5th meeting please send those in soon so that the minutes can be finalized.

Nancy: Have you been able to talk to your attorney about the last two bullet points of the conservation easement?

If possible, please respond with your comments by August 18th. If you will not be able to respond by that date and need a little more time, please let me know. Thanks for all your efforts.



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

**Federal Highway Administration
California Division**

Current Date

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In Reply Refer To:
HDA-CA
Placer Parkway
Document #:

[Recipient Name]
[Recipient Title]
[Recipient Company]
[Recipient Street Address]
[Recipient City, STATE, Zip]

Dear [Mr./Ms. Recipient Last Name]:

Over the last six years, the Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans), and the South Placer Regional Transportation Authority (SPRTA) have coordinated with the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (ACOE), and the U.S. Fish and Wildlife Service (FWS) on the Placer Parkway Corridor Preservation Tier 1 Environmental Impact Statement/Program Environmental Impact Report (Tier 1 EIS/EIR). Coordination for this Tier 1 EIS/EIR was governed by modifying the National Environmental Policy Act/Clean Water Act Section 404 Integration Process for the Surface Transportation Projects Memorandum of Understanding (NEPA/404 MOU).

FHWA is requesting your concurrence that Alternative 5 is the corridor most likely to contain the Least Environmentally Damaging Practicable Alternative (LEDPA). This request is based on the June 2008 LEDPA package submitted by FHWA and the additional information developed during the past year which is listed below and attached to this letter.

FHWA is also requesting your concurrence on the Mitigation Framework included as the last attachment to this letter. The Mitigation Framework, as discussed at our August 5, 2009 meeting, describes in general terms the processes that the project proponent/Lead Agency will use to mitigate the impacts of the project.

As background, on June 24, 2008, the FHWA requested your concurrence that Alternative 5 is the most likely corridor to contain the Least Environmentally Damaging Practicable Alternative (LEDPA). On August 14, 2008, the ACOE and EPA did not concur and the NEPA/404 staff group agreed to initiate the dispute resolution process. The Informal (Mid-level managers) elevation meeting was held on October 15, 2008, and a Formal (Senior-level managers) elevation meeting was held on January 23, 2009. The NEPA/404 staff group was directed to reconvene



[Recipient Name]
August 11, 2009
Page 2

and develop a mutually acceptable solution. Meetings on April 17, May 29 and August 5 resulted in the following additional information:

1. Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway, including a figure depicting the easement area in relation to Alternative 5;
2. Additional clarification in a July 7, 2009 memo from Stan Tidman – Transportation Agencies' Response to Erin Foresman Feedback (emailed on July 8);
3. Summary of resources agencies' concerns and additional clarification in a July 31, 2009 document entitled Transportation Agencies CE (conservation easement) Responses to the July 2009 Resources Agencies' Feedback;
4. Discussion and agreement regarding the items identified in Item 3, as recorded in the Meeting Minutes of the meeting of August 5, 2009. The agreement reached at the August 5, 2009 meeting is memorialized in the attached Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway.

FHWA, Caltrans, and SPRTA appreciate your consideration of the information provided in this letter and attachments.

If you have any questions or require any additional information, please contact Gary Sweeten, North Team Leader, Local Agency Programs, at (916) 498-5128.

Sincerely,

For
Walter C. Waidehich, Jr.
Division Administrator

Attachments:

June 24, 2008 FHWA letter requesting concurrence that Alternative 5 is the most likely corridor to contain the Least Environmentally Damaging Practicable Alternative (LEDPA).

June 12, 2009 "Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway" including a figure

[Recipient Name]
August 11, 2009
Page 3

July 7, 2009 memo from Stan Tidman – Transportation Agencies' Response to Erin Foresman
Feedback

July 31, 2009 Transportation Agencies CE Responses to July 2009 Resources Agencies'
Feedback

Meeting Minutes, August 5, 2009 Interagency Meeting

“Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway” as revised
August 5, 2009

Placer Parkway Corridor Preservation - Tier 1 Mitigation Framework Pursuant to Modified
NEPA/404 Agreement (Date TBD)

DRAFT

**Placer Parkway Corridor Preservation - Tier 1 Mitigation Framework
Pursuant to Modified NEPA/404 Agreement**

1. Introduction/Overview

The Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans), and the South Placer Regional Transportation Authority (SPRTA) have coordinated with the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (ACOE), and the U.S. Fish and Wildlife Service (FWS) on the Placer Parkway Corridor Preservation Tier 1 Environmental Impact Statement/Program Environmental Impact Report (Tier 1 EIS/EIR). Coordination for this Tier 1 EIS/EIR was governed by modifying the National Environmental Policy Act/Clean Water Act Section 404 Integration Process for the Surface Transportation Projects Memorandum of Understanding (NEPA/404 MOU). This Mitigation Framework has been prepared as Concurrence Point #5. It provides a summary of mitigation considerations and mitigation commitments for impacts that are identified in Tier 2 (the project-level analysis) of the Placer Parkway project. It is not intended that the no-development buffer would be counted toward the project's compensatory mitigation obligation.

While the project proponent and Lead Agency for the Tier 1 process under the California Environmental Quality Act (CEQA) has been the South Placer Regional Transportation Agency (SPRTA), it is not certain that SPRTA will provide a similar function during the Tier 2 process. Therefore, in this document neither the project proponent nor the Lead Agency is identified by name.

2. Mitigation Identified in the Tier 1 EIS/EIR

2.1 Compliance with regulations/guidance and consultation

- The project proponent/Lead Agency will continue to coordinate with local jurisdictions in Tier 2 to reduce the likelihood of impacts on aquatic resources. Coordination will include development of specific project design details described below to minimize impacts and consultation regarding the design and location of other planned and proposed development in the study area.

2.2 Compliance with standard conditions in the form of regulatory requirements

- The project proponent/Lead Agency will comply with standard conditions in the form of regulatory requirements of federal, state and local agencies, including compliance with NPDES requirements and Sutter and Placer county ordinances during Parkway construction and operations with respect to the development and implementation of a Stormwater Pollution Prevention Plan (SWPPP) and Best Management Practices (BMPs) to prevent erosion, control runoff, reduce roadway and vehicle pollutants from entering watercourses; and prevention of pollution discharge off site. Specific strategies would include:

- Meeting Sutter and Placer county, and Reclamation District No. 1000 requirements for siting and design of facilities.
- Pursuant to the Phase II NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems, the Parkway will incorporate long-term, post-construction BMPs and monitoring to protect water quality and control runoff.
- To comply with federal and state Clean Water Act requirements, the project may be required to adhere to Low Impact Development (LID) principles to protect water quality in the interest of fish and wildlife. LID strategies that integrate BMPs to protect water quality may also reduce runoff quality.
- Compliance with applicable Caltrans Stormwater Permits, Caltrans Stormwater Quality Handbook (Caltrans, 2003a), and Statewide Stormwater Management Plan (Caltrans, 2003b)
- Preparation and implementation of a Water Quality Management Plan.
- Compliance with the applicable Sutter and Placer county ordinances that require Erosion and Grading Plans.
- Submittal of a Section 404 permit to the USCOE.
- Submittal of a Section 1600 Permit Notification of Lake or Streambed Alteration to the California Department of Fish and Game (CDFG).
- Filing of an application for the Dewatering and Low Threat Discharges to Surface Waters Permit, Order No.5-00-175 (NPDES CAG995001), if required.
- Coordination, as needed, with the American Basin Council of Watersheds' (Pleasant Grove Creek/Curry Creek Watershed Management Group) objectives and requirements during planning, design, and construction of Placer Parkway
- In the area covered by the Natomas Basin Habitat Conservation Plan (NBHCP), a mitigation fee will be paid to the NBHCP pursuant to the HCP. The project proponent/Lead Agency or Sutter County will enter into consultation with USFWS and CDFG to amend the NBHCP to include the portions of the project extending west of SR 70/99, or to provide such other compensation as would meet the intent of the NBHCP with respect to protection of special-status species in the NBHCP service area.

2.3 Design Measures

- During development of the Tier 1 conceptual design of the Parkway, efforts were made which directly or indirectly help to avoid impacts on aquatic resources, including hydrology, floodplains, water bodies, vernal pools and wetlands. These efforts included:
 - Assumed use of bridges to span floodplains. Culverts would be used at smaller creek crossings as appropriate, depending on local conditions and permit requirements. The Pleasant Grove Creek floodplain would be crossed by bridges (one in each direction) supported by abutments located approximately 800 feet on either side of the creek to avoid the riparian habitat associated with the creek.
 - Roadway elevation within the 100-year floodplain such that the bottom of any new bridges would be above the 100-year water surface elevation. The roadway support structures and bridges would be designed to minimize environmental impact and not impede stream and flood flows.

- Tier 2 design would consider, where possible, implementation of the following strategies to reduce potential impacts on aquatic resources:
 - Avoidance or minimization of stream crossings.
 - Alignment of the roadway within the corridor to decrease impervious cover by reducing the area of pavement or number of road miles.
 - Provision of sufficient setback distances in accordance with Caltrans and county requirements between the highway right-of-way and wetlands or riparian areas.
 - Mimic natural patterns as much as possible, including considering Low Impact Development whenever appropriate.
 - Limitation of disturbance during construction to minimize impacts, particularly near creeks, wetlands and vernal pool complexes, including limiting amount of fill placed in creeks, wetlands, or vernal pool complex areas and restoring disturbed areas to minimize erosion. Limitation of temporary disturbance to minimum areas necessary for construction and restoration of disturbed areas to pre-project conditions.
 - Locating the roadway to avoid or minimize impacts to streams and ecologically sensitive areas (e.g., wetlands and vernal pool complex areas).
 - Locate the alternative as low in the watershed as possible, to minimize the area affected.
 - Consideration of bridges or viaducts across stream crossings where the angle of the crossing is 45 degrees or less.
 - Consideration of the use of a combination of a viaduct/conventional highway in the western part of the Parkway.
 - Design project features to avoid direct discharge of roadway runoff that may contain pollutants into streams and other sensitive sites (e.g., wetlands and vernal pool complex areas).
 - Obtaining floodplain easements on private land adjacent to the Parkway in order to provide potential detention/retention facilities to mitigate excessive run-off and provide flood control.
 - Avoidance and/or minimization of construction activities in or near creeks and floodplains, including limiting amount of fill placed in creeks.
 - Use of the least intrusive construction methods reasonably available.
 - Design of project features (e.g., culverts, drainage systems, and bridges) to avoid increasing flow velocities that may cause or contribute to downstream erosion and flooding and minimize potential for debris clogging that could cause flooding. Bridges and columns will be designed such that increase in the BFE will be less than one foot as specified by FEMA (see Section 3.1 Placer Parkway Hydrology and Floodplains Technical Report (URS, 2007d).
 - Use of structural runoff controls, such as vegetated swales.
 - Incorporation of appropriate BMPs (e.g., provided appropriate detention and use vegetation to reduce flow velocities and peak discharges).
 - Maximization of the angle of stream crossing to as close to 90° as possible.

2.4 Other Mitigation Measures Related to Biological Resources

- Mitigation strategy for impacts to areas within Sutter County but not in the Natomas Basin: This would include a combination of avoidance, minimization, and compensation. Strategies to avoid and minimize potential impacts would include scheduling construction activities to minimize disturbance during sensitive life cycle phases of wildlife species; monitoring construction activities to limit disturbance, vegetation removal, and habitat damage; and implementing an environmental awareness training program for all construction personnel. In keeping with the strategy presented in *Eco-Logical* (Brown, 2006), compensation would include some combination of habitat preservation, restoration, and creation developed in coordination with federal, state, and local agencies with the goal of protecting larger, connected habitat rather than protecting fragmented areas of a single resource.
- Mitigation for impacts to vernal pool species would be consistent with the Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon. Existing USFWS and CDFG mitigation guidelines for giant garter snake, Valley elderberry longhorn beetle, and Swainson's hawks would be used.
- Avoidance and minimization of impacts is the preferred strategy for Placer Parkway, as identified in *Eco-Logical* guidance from the U.S. Department of Transportation (Brown, 2006). Consistent with the *Eco-Logical* strategy, required mitigation will be implemented so that it would complement and expand existing conservation and open space areas in the Parkway vicinity. A number of opportunities for restoration and conservation are identified in the draft Ecosystem Restoration Plan for the Pleasant Grove Creek and Curry Creek watersheds (Foothill Associates, 2005).
- Mitigation strategy for impacts in the absence of the PCCP would be based upon the mitigation guidelines presented in *Eco-Logical* (Brown, 2006). This strategy would include a combination of avoidance, minimization, and compensation. Compensation would include some combination of habitat preservation, restoration, and creation developed in coordination with federal, state, and local agencies. Compensation areas would be selected based on several criteria reflecting habitat value and regulatory and planning parameters. Compensatory habitat mitigation in the absence of the PCCP would be implemented according to the strategies outlined for Placer County in the Natural Environment Study.

3. Compensatory Mitigation through the Placer County Habitat Conservation Plan/Natural Communities Conservation Plan (Placer County Conservation Plan, or PCCP)

- If available, compensatory mitigation for direct, secondary and indirect, and cumulative impacts will be mitigated through the PCCP. The project would be a Covered Activity under the PCCP. If the PCCP is not available, mitigation would be in compliance with the Final Rule for Compensatory Mitigation for Losses of Aquatic Resources (below). In either event, biological impacts not addressed under the PCCP or the Final Rule may be subject to other mitigation requirements.

4. Final Rule re Compensatory Mitigation for Losses of Aquatic Resources

- Unless impacts are mitigated through the PCCP, The project proponent/Lead Agency will comply with Compensatory Mitigation for Losses of Aquatic Resources - Final Rule (40 CFR Part 230, April 10, 2008) and its hierarchy of preferred compensation:
 - Mitigation banks

- In-lieu fees
- Permittee-responsible

5. Mitigation Opportunities

- Mitigation opportunities within an approved PCCP: The latest PCCP map depicts a reserve acquisition area that is 70,813 acres in size. This includes approximately 18,000 acres of vernal pool grasslands. The balance of the reserve area includes irrigated pastures, rice, valley foothill riparian, valley oak woodlands, blue oak woodlands, montane hardwoods, blue oak savannah. Aquatic resources are dispersed throughout all of these natural communities. In the foothills aquatic resources are abundant as a consequence of irrigation practices that have resulted in a significant amount of canal development, flood irrigation, tail water conveyance and other features that are saturating an otherwise dry landscape. In addition to the large reserve area, the PCCP also includes a variable stream buffer within which conservation and restoration of aquatic resources is anticipated. The width of the buffer is variable as to location and stream order. There appears to be ample mitigation opportunities in the context of the PCCP.
- If the PCCP is not available by the completion of Tier 2, the project proponent/Lead Agency would look to other opportunities in Placer County for locations of appropriate mitigation banks or other conservation or mitigation opportunities. These opportunities could include:
 - Existing banks in Placer County with either preservation or conservation credits available, including the Mariner Conservation Bank for Swainson's hawk credits (Westervelt Ecological)
 - Mitigation banks expected to become available prior to the completion of Tier 2, including the Locust Road Mitigation Bank (Wildlands, Inc.), the Toad Hill Ranch Mitigation Bank (Wildlands and Placer Land Trust), Lincoln School Farm (Wildlands, Inc.), and potentially others by the time the Tier 2 process is initiated.
 - Areas with opportunities for enhancement within Placer County
 - Acquisition of key properties

Areas such as the Koshman property, Antonio Mountain Ranch, and Riosa Gun Club may provide opportunities with respect to the last two bullets above.

- Mitigation opportunities may be available through banks or wetland preserves that serve the Southeastern Sacramento Valley Vernal Pool Area with a service area that includes southwestern Placer County, but may be outside of Placer County (not a first choice)
- The project proponent/Lead Agency would work with the resource agencies to identify appropriate mitigation, including opportunities to build on existing conservation lands.

Terms of a No-Access Easement for the Buffer Area Adjacent to Placer Parkway
(as revised August 5, 2009)

The following briefly outlines the attributes of an easement that could be used as a vehicle to preclude interchanges along proposed alternative 5 for the proposed Placer Parkway from 3,250 feet west of the western boundary of the Reason Farms Retention Basin panhandle to the Natomas East Main Drainage Canal, as shown on the attached figure.

- The easement will be in the form of a conservation easement created pursuant to California Civil Code Section 815.
- The easement will be perpetual in duration. The no-access provision will be binding on successive owners for the purpose of retaining the land predominantly in its natural, scenic, historical, agricultural, forested or open-space condition. (Cal. Civ. Code §§815.1, 815.2.)
- Instrument creating the conservation easement will be recorded in the county where the land is located. (Cal. Civ. Code §815.5.)
- The easement will be held by a tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in California which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.
- If the easement will not be accepted by such non-profit organization, or if the organization is no longer able to hold the easement, the first priority shall be to convey it to a federal agency or to a state government entity such as the California Department of Fish and Game. Failing that, the NEPA/404 agencies will work together through the NEPA/404 process to identify and to concur on an acceptable conservation easement holder.
- The terms of the easement may be enforced in court, and violation of the easement may result in damages, including the cost of restoration.
- Under Subdivision Map Act, city or county must generally deny approval of a tentative map if the land is subject to an open-space easement, agricultural conservation easement, or conservation easement.
- Easement will include Grantor's covenant not to allow access to right of way from adjacent land, and not to participate in planning or construction of interchange(s) between highway project and any surface streets from 3,250 feet west of the western boundary of the Reason Farms Retention Basin panhandle to the Natomas East Main Drainage Canal. Easement to expressly provide that covenant is specifically enforceable. May also identify certain third party beneficiaries with right to enforce covenant.
- The covenant not to allow access will include a specific prohibition regarding interchange structures in the airspace over the property.

Attachment: Figure