

**APPENDIX F: UNITED STATES ARMY CORPS OF ENGINEERS LEAST  
ENVIRONMENTALLY DAMAGING PARCTICABLE ALTERNATIVE  
CONCURRENCE LETTER, JANUARY 5, 2024, AND U.S. ENVIRONMENTAL  
PROTECTION AGENCY LEDPA CONCURRENCE LETTER, JANUARY 9, 2024**

**This page left intentionally blank.**



## REGION 9

SAN FRANCISCO, CA 94105

January 9, 2024

Stefan Galvez-Abadia  
Director of Environmental Services  
California High-Speed Rail Authority  
770 L Street, Suite 620  
Sacramento, California 95814

**Subject:** Palmdale to Burbank Project Section: Checkpoint C Summary Report, Request for Agreement on Preliminary Least Environmentally Damaging Practicable Alternative and Preliminary Compensatory Mitigation Plan

Dear Director Galvez-Abadia:

Thank you for the opportunity for the U.S. Environmental Protection Agency to provide comments in advance of publication of the Final Environmental Impact Statement (FEIS) for the Palmdale to Burbank project section of California High Speed Rail (HSR). This letter responds to your November 16, 2023 request for agreement on the Preliminary Least Environmentally Damaging Practicable Alternative determination and Preliminary Compensatory Mitigation Plan for the proposed SR14A Build Alternative. We appreciate the significant revisions made to the Checkpoint C materials in response to comments provided by our agency via email on September 13, 2023, and through a series of coordination meetings and technical workshops held between August and November 2023. We also understand that the Checkpoint C Summary Report will be further revised to incorporate feedback presented at the formal Checkpoint C meeting on December 7, 2023.

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

### *Least Environmentally Damaging Practicable Alternative (LEDPA)*

After reviewing the information provided in the Checkpoint C Summary Report, and per the NEPA/404 MOU, the EPA provides agreement with CHSRA's determination that the SR14A Build Alternative is the preliminary LEDPA for the Palmdale to Burbank Project Section of HSR. As this determination has been made prior to public circulation of the FEIS, it will be revisited if necessary should additional information become available after public comments are received and/or as project design advances.

### *Preliminary Compensatory Mitigation Plan*

The Preliminary Compensatory Mitigation Plan is a conceptual strategy specifying resources available for the establishment and/or rehabilitation of aquatic resources. The Checkpoint C Summary Report provides a general overview of mitigation needs, opportunities, and potential implementation scenarios. According to the

submittal, the SR14A Build Alternative will result in permanent impacts to 0.87 acres of wetlands and 25.91 acres of other waters of the United States (WOUS). Of that, 17.74 acres consist of constructed waters/basins that are likely to be replaced on-site, with functions of the existing constructed features being retained. Off-site mitigation will likely be needed for all other permanent, direct impacts on jurisdictional waters, totaling approximately 9.04 acres of impact. The submittal presents a preliminary determination that compensation for these unavoidable impacts on jurisdictional waters can likely be completed through a combination of approved mitigation bank credits and permittee-responsible mitigation in partnership with one or more of the open-space, parkland, or other natural resource management agencies in the region.

Per the NEPA/404 MOU, the EPA provides agreement that the Preliminary Compensatory Mitigation Plan may provide sufficient mitigation to meet the needs of the project under Section 404 of the Clean Water Act. The EPA expects that more site-specific information will be made available prior to Clean Water Act Section 404 permitting. Specifically, the Final Mitigation Plan should include information on all key elements of the mitigation rule (Subpart J of the 404(b)(1) Guidelines at 40 CFR Part 230) in order to ensure compliance. The EPA looks forward to collaborating with your agency and Corps staff in the use of the program technical procedures to implement a watershed approach to mitigation. We understand that impacts will likely be refined and reduced as design advances, and we recommend that all possible measures be taken to reduce impact numbers through further avoidance and minimization measures. If impacts to WOUS are reduced as a result of changes in project design, adjustments to the amount of compensatory mitigation will be made accordingly. Permitted impacts to WOUS will be confirmed during project construction.

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

Sincerely,

**CONNELL  
DUNNING** Digitally signed by  
CONNELL DUNNING  
Date: 2024.01.09  
16:17:05 -08'00'

Connell Dunning  
Transportation Team Lead  
Environmental Review Branch

cc: Sue Meyer

Deputy Assistant Environmental Services Manager, California High Speed Rail Authority

Susan A. Meyer Gayagas

Regional Technical Specialist for Transportation & Infrastructure, U.S. Army Corps of Engineers

Jonathan Snyder

Assistant Field Supervisor, U.S. Fish and Wildlife Service



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT  
915 WILSHIRE BOULEVARD, SUITE 1109  
LOS ANGELES, CALIFORNIA 90017-3409

January 5, 2024

California High-Speed Rail Authority  
Attn: Stefan Galvez-Abadia  
Director of Environmental Services  
770 L Street, Suite 620  
Sacramento, California 95814

Dear Mr. Galvez-Abadia:

I am writing in response to your November 16, 2023, Checkpoint C Summary Report, and appendices for the proposed California High-Speed Rail (CHSR) Program, Palmdale to Burbank (P-B) Project Section located in Los Angeles County, California (reference to Department of the Army file number SPL-2009-00933). This letter constitutes the U.S. Army Corps of Engineers, Los Angeles District's (Corps) formal response to your Checkpoint C request in accordance with our "*National Environmental Policy Act/Clean Water Act Section 404/Rivers and Harbors Act of 1899 Section 14 Integration Process for the California High-Speed Train Program Memorandum of Understanding*", dated November 2010 ("NEPA/404/408 MOU").

As a cooperating agency under the National Environmental Policy Act (NEPA) on the preparation of the project's joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and in fulfillment of our responsibilities under the NEPA/404/408 MOU, we reviewed the draft and final versions of the Checkpoint C documents, dated July 2023 and November 2023, respectively, and provided written comments on issues specific to our Section 404 of the Clean Water Act ("Section 404"; 33 U.S.C. § 1344) and Section 14 of the Rivers and Harbors Act of 1899 ("Section 408"; 33 U.S.C. § 408) authorities. We also participated in a series of coordination meetings and technical workshops with the California High-Speed Rail Authority (Authority), your consultants, and the U.S. Environmental Protection Agency between August 2023 and November 2023.

Following our December 7, 2023, formal Checkpoint C meeting and our independent review of the information and analyses presented in the Checkpoint C Summary Report and appendices, we concur the SR14A Build Alternative appears to be the "preliminary" least environmentally damaging practicable alternative (LEDPA) based on the information and analysis made available to us. We further concur that while the draft compensatory mitigation plan ("CMP"; Appendix A, dated November 2023) is only conceptual in nature it demonstrates a range of opportunities the Authority may pursue to provide sufficient mitigation for offsetting the unavoidable losses of aquatic resource functions and services pursuant to the Section 404(b)(1) Guidelines and the 2008 "*Final*

*Rule for Compensatory Mitigation for Losses of Aquatic Resources* (“2008 Mitigation Rule”; 33 CFR Part 332).

Furthermore, based on our review under Section 408 of the information and analyses presented in the Checkpoint C Summary Report, appendices, and conceptual plans, we have determined that the alignment portions near Lopez Basin, Hansen Basin, through Hansen Basin, and crossing Tujunga Channel have potential concerns. Technical comments have been provided to and acknowledged by the Authority for consideration. Technical comments regarding the preferred SR14A Build Alternative include, but not limited to, potential design challenges through seismic areas and faults, the potential for leakage or flooding from the Reservoir inundation events into tunnels or portals, and concerns about structural integrity of existing channel wall due to lowering adjacent grade. Technical comments regarding alternative alignments such as the E2 Build Alternative include, but not limited to, consideration for scour and debris for piers within Hansen Basin, potential flooding of portal P5, and requirements to offset fill in the flood pool. Notwithstanding the foregoing technical comments, we do not object to the preliminary recommendation of carrying forward the SR14A Build Alternative for further coordination and review under Section 408, as long as the Authority adheres to the conditions specified below.

Please note, our concurrence and preliminary recommendation reflect the Corps’ professional judgment in light of the limitations documented in the Checkpoint C Summary Report and are based on conditions and information existing at the time the Checkpoint C documents were provided to us. Therefore, our responses do not take into account any subsequent changes the Authority may make in the future. Toward this end, on December 11, 2023, the Corps transmitted additional written comments, guidance, and suggestions for revising the Checkpoint C Summary Report and [preliminary] draft CMP based on our Checkpoint C meeting discussions. As a condition of our concurrence, we expect the Authority to revise the Checkpoint C Summary Report and CMP to incorporate our feedback.

I also highlight the Authority requested our Checkpoint C responses prior to the Authority a) completing formal consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act and obtaining the USFWS’ biological opinion; b) performing site-specific geotechnical investigations; c) conducting on-the-ground aquatic, biological, and cultural resource surveys and other fieldwork (e.g., aquatic resource functional or condition assessment) within the SR14A Build Alternative footprint of disturbance; and d) providing the Corps with greater than 15% engineering design. Accordingly, our responses are commensurate with the level of information made available in the Checkpoint C documents. Should new or additional data come forward that would have a material bearing on the “preliminary” LEDPA, draft CMP, or the preliminary 408 recommendation that was not previously considered by the Corps, we may revisit, modify, or rescind one or both responses.

Additionally, as conditions of our preliminary 408 recommendation and to assist in your compliance with Section 408, the Authority will need to coordinate closely with the Corps in providing us with sufficient engineering analysis. Specifically, we request a 30% and 60% design process review of the preferred alternative Tujunga Channel crossing prior to the submittal of the Section 408 permission request. We also request final designs of the preferred alternative portions near Lopez Basin and Hansen Basin for final concurrence. This preliminary 408 recommendation with conditions is valid for 5 years from the date of this letter. If the design changes such that the preferred alternative is no longer a minor, low-impact modification to the Corps' flood risk reduction projects, this recommendation is no longer valid and may require approval from Corps Headquarters.

Lastly, we recognize the importance our Section 404 permit and Section 408 permission decision-making is to the Authority's ability to implement the Palmdale to Burbank project section. For this reason, it is worth reiterating that a Section 404 standard individual permit decision will first require we approve a final CMP consistent with the 2008 Mitigation Rule (or superseding mitigation regulations/policies in effect at the time when a Section 404 permit application is processed); receive a copy of your Section 401 water quality certification (or waiver) and evidence of the Authority's compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act; ensure all applicable subparts of the Section 404(b)(1) Guidelines have been satisfied; render our public interest review determination; and issue our Record of Decision under NEPA adopting your Final EIS or parts thereof; and make a Section 408 permission decision, if applicable.

Thank you for your continued collaboration on the CHSR P-B Project Section. We value our partnership and appreciate the Authority's efforts to work with us in reaching Checkpoint C concurrence and a preliminary 408 recommendation. If you have questions, please contact Susan A. Meyer Gayagas at (213) 304-9810 or via email at [susan.a.meyer@usace.army.mil](mailto:susan.a.meyer@usace.army.mil). Please also help me evaluate and improve the regulatory experience for others by completing the customer survey form at <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

Sincerely,



Spencer D. MacNeil, D. Env.  
Deputy Chief, Regulatory Division

cc:

Clifton Meek, U.S. Environmental Protection Agency (meek.clifton@epa.gov)  
Jonathan Snyder, U.S. Fish and Wildlife Service (jonathan\_d\_snyder@fws.gov)  
Sarvy Mahdavi, U.S. Environmental Protection Agency (Mahdavi.sarvy@epa.gov)  
Scott Rothenberg, California High-Speed Rail Authority (scott.rothenberg@hsr.ca.gov)  
Sue Meyer, AECOM-Fluor (sue.meyer@hsr.ca.gov)