MEMORANDUM OF UNDERSTANDING

Among:
United States Department of Transportation, Federal Railroad Administration
California High-Speed Rail Authority
United States Environmental Protection Agency
United States Army Corps of Engineers

National Environmental Policy Act (42 U.S.C. 4321 et seq)

and

Clean Water Act Section 404 (33 U.S.C. 1344)

and

Rivers and Harbors Act Section 14 (33 U.S.C. 408)

Integration Process

for the

California High-Speed Train Program

November 2010

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Acronyms and Definitions

Authority: California High-Speed Rail Authority
CWA: Clean Water Act
EIS: Environmental Impact Statement
EPA: U.S. Environmental Protection Agency
FRA: Federal Railroad Administration
DMP: Draft Mitigation Plan
HST: California High-Speed Train
LEDPA: Least Environmentally Damaging Practicable Alternative
MOU: Memorandum of Understanding
NEPA: National Environmental Policy Act
RHA: Rivers and Harbors Act
USACE: U.S. Army Corps of Engineers
HQUSACE: U.S. Army Corps of Engineers Headquarters

"Integration Project" – a project to which this MOU applies.

"Responding Agencies" – the Signatory Agencies with resource or regulatory responsibilities: EPA and USACE.

"Signatory Agencies" – FRA, EPA, USACE, and the Authority.

"Tiering" – Tiering of an EIS refers to the process of addressing a broad, general program, policy or proposal in a programmatic EIS (Tier 1 EIS), and analyzing a narrower site-specific proposal, related to the initial program, plan or policy in a project-level Environmental Impact Statement (Tier 2 EIS).

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Section I. Introduction

The parties to this Memorandum of Understanding (MOU) are the Federal Railroad Administration (FRA), the California High-Speed Rail Authority (Authority), the U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (EPA). The goal of this MOU is to facilitate compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. section 4321 *et seq*), Clean Water Act (CWA) section 404 (33 U.S.C. section 1344) (hereinafter "Section 404"), and Rivers and Harbors Act section 14 (33 U.S.C. section 408) (hereinafter referred to as "Section 408") processes for the project-level (Tier 2) Environmental Impact Statements (EISs) for the nine sections of the California High-Speed Train (HST) system. The integration of these processes is intended to expedite decision-making while improving the overall quality of those decisions. The purpose of this MOU is to foster agreement among the Signatory Agencies and to make it possible for the USACE to more efficiently adopt the Tier 2 EISs for which the FRA is the Federal lead agency.

Two California High Speed Train Program Environmental Impact Reports/Environmental Impact Statements (EIR/EISs) were prepared by the Authority and FRA as the first programmatic phase (Tier 1) of a tiered environmental review process. The Authority is the state lead agency under California law (California Public Utilities Code § 185000 *et seq.*) with responsibility for planning, construction, and operation of a high-speed passenger train service. As Federal lead agency for Tier 1 environmental review under NEPA, FRA worked jointly with the Authority to carry out the analyses and evaluations included in the Tier 1 EIR/EISs. The Tier 1 EIR/EISs considered the comprehensive nature and scope of the proposed HST system at the conceptual stage of planning and decision-making, including alternative transportation improvements, and potential route and station locations. FRA and the Authority's decisions on the Tier 1 EIR/EISs were to approve the HST system and select general corridors and station locations. These decisions were made in November 2005 and December 2008.

The EPA and USACE participated as cooperating agencies under NEPA in the Tier 1 environmental processes, including the development of both the Draft and Final Program EIR/EISs. As part of the process to integrate Section 404 considerations into the early NEPA planning, EPA and USACE concurred on the project purpose for the HST system, the range of alternatives considered, and the selection of the preferred corridors, routes and stations most likely to yield or contain the least environmentally damaging practicable alternative (LEDPA). These concurrence letters are incorporated in this MOU as Appendix C.

Tier 2 environmental reviews covered by this MOU will advance and expand upon the Tier 1 decisions of the Authority and FRA. The USACE has agreed to participate as a cooperating agency under NEPA in the Tier 2 environmental processes, including the development of both the Draft and Final EIR/EISs. The Tier 2 EIS/EIRs will evaluate the selected corridors and stations

in site-specific detail through further consultation with EPA and USACE regarding the Section 404 and Section 408 permitting processes, to support decision-making for any necessary USACE (1) Section 404 permit decisions to discharge dredged or fill material into waters of the U.S. and (2) Section 408 permit decisions for alterations/modifications to existing USACE projects[1]. As sections of the proposed HST system are advanced, these Tier 2 reviews will examine a range of HST project alternatives within corridors and at station locations selected in the Tier 1 EIR/EIS in addition to other corridors or alternatives that may be identified through public scoping, or through the availability of new information or analysis not considered during the Tier 1 phase, as well as a no action alternative. The goal of this MOU is for each Tier 2 EIR/EIS to support timely and informed agency decision-making, including but not limited to: issuance of necessary Records of Decision (RODs), Section 404 permit decisions, real estate permissions or instruments (as applicable), and Section 408 permit decisions (as applicable) for project construction, operation, and maintenance.

Section II. Overview

This MOU has the following components:

1. **Procedures (Section III)**. This section outlines: a) the procedures the Authority and FRA will follow in presenting information to Responding Agencies, b) procedures the Responding Agencies will follow in replying to the information, and c) the Authority's and FRA's options once a response is received. This section equates to the "who, what, when, and how" of the MOU. For a conceptual overview of this section, see Figure 1, *Overview of the California HST Program MOU Process* and Figure 2, *Coordination and Checkpoint Process*. Under appropriate circumstances, a Signatory Agency may withdraw from the integration process for a specific section of the HST system.

[1] Section 408 authorizes the Secretary of the Army to approve modifications to existing USACE projects. The Assistant Secretary of the Army (Civil Works) issued a Memorandum for the Chief of Engineers, dated 16 April 2004, delegating to the Chief of Engineers the approval authority given to the Secretary of the Army in Section 408. The Chief of Engineers, in a Memorandum for the Director of Civil Works, dated 2 April 2009, delegated the approval authority to the Director of Civil Works. In addition, approval of relatively minor, low impact modifications has been further delegated to the District Engineer, by the Director of Civil Works in a memorandum dated 18 June 2010 ("HQUSACE approval"). Section 408 is the authority for all such approvals, and this MOU applies to modifications of USACE projects under the authority of Section 408 regardless of approval level.

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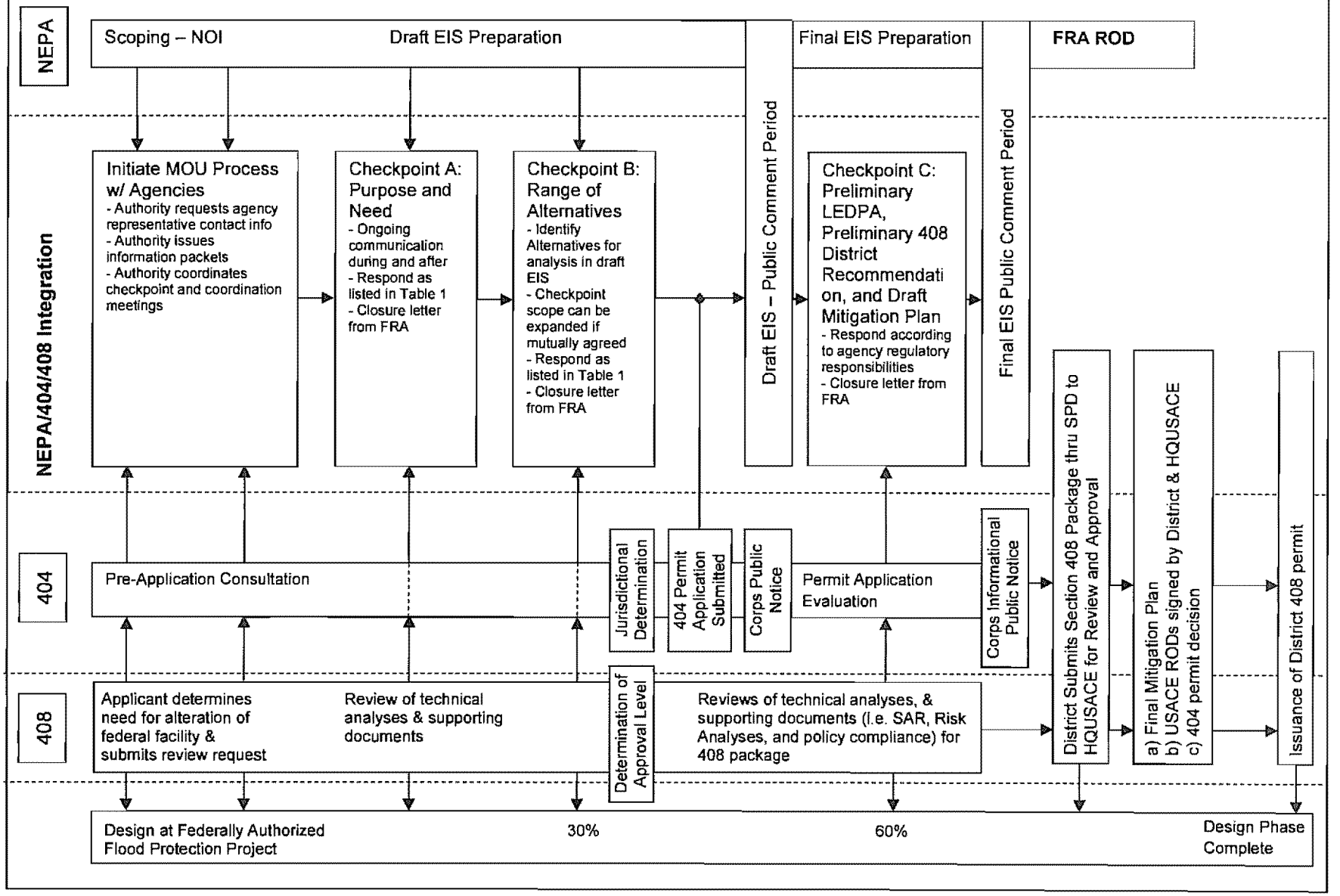
Figure 1. Overview of the California HST Program MOU Process
General Note – This assumes the USACE is a cooperating agency



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2. **Dispute Resolution (Section IV)**. This section describes the dispute resolution tools that may be used when the Authority and FRA receive disagreement, non-concurrence, or not recommend (defined below). The primary resolution tool in this agreement is the "mid-level elevation." The mid-level elevation is a management meeting that relies on a cooperatively developed staff document, called the briefing paper, to frame the issues for resolution. Procedures for the mid-level elevation and other dispute resolution tools are also presented.
3. **Modification and Termination (Section V).** This section provides details on modification and termination of the MOU. This MOU may be modified and superseded by written agreement of all the Signatory Agencies through the execution of an amendment of the MOU.
4. **General Provisions (Section VI).** This section provides details on the legal import of this document. The MOU provides a framework for cooperation. The signatories to this MOU encourage ongoing formal and informal cooperation not specifically described in this MOU.
5. **Effective Date and Duration (Section VII).** This final section provides details on when the MOU becomes effective and the duration of the legal force and effect of the MOU.

Section III. The NEPA/404/408 Integration Process

This section lays out the Signatory Agencies' roles at each checkpoint, outlines the Authority's and FRA's options for resolving disagreement, non-concurrence, or not recommend, and describes each of the three checkpoints.

1. **Project Inclusion.** This NEPA/404/408 integration process applies to all of the HST Tier 2 EISs in which the USACE has made a project-specific decision based on the best available information confirming USACE jurisdiction pursuant to Sections 404 and/or 408 for each HST section Tier 2 EIS/EIR.
2. **Withdrawal**.

   (a) By FRA and the Authority. For an individual HST project section, the FRA and Authority may jointly withdraw from applying this agreement upon written notice to EPA and USACE.

   (b) By the USACE.

   (1) If at any time after the initiation of a particular Tier 2 EIS, USACE concludes that the proposed action in that particular project section does not appear to raise significant Section 404 and/or Section 408 issues warranting

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further USACE Section 404 and/or Section 408 integration, USACE will communicate that conclusion to the other Signatory Agencies in writing. Thereafter, the applicable USACE District will no longer integrate the Section 404 and/or Section 408 permitting processes and the MOU process as to that particular project section. If, subsequent to USACE's withdrawal, new information arises or the proposed project is changed in some material way that alters USACE's previous conclusion, USACE will acknowledge the new information and/or project changes in writing to the other Signatory Agencies. USACE will then once again participate in this MOU process as to the subject project section. However, USACE agrees not to revisit previous Checkpoint decisions made during the time of USACE withdrawal unless it is necessary to meet USACE's legal obligations.

(2) If at any time after the initiation of a particular Tier 2 EIS, USACE concludes that its comments/substantive requirements are not being satisfactorily addressed in the EIS, USACE will communicate that conclusion to the other Signatory Agencies in writing. Thereafter, the USACE will initiate the mid-level elevation, and may continue elevation as needed, as provided in Section IV. Completion of the elevation process should be within 60 calendar days of receipt of written notification to initiate elevation. Following completion of elevation without resolution, the applicable USACE District will no longer integrate the Section 404 and/or Section 408 permitting processes and the MOU process as to that particular project section.

(c) By the EPA. If at any time after the initiation of a particular Tier 2 EIS, EPA concludes that the proposed action in that particular project section does not appear to raise significant NEPA or Section 404 issues warranting further EPA involvement, or that its comments/substantive requirements are not being satisfactorily addressed in the EIS, EPA will communicate that conclusion to the other Signatory Agencies in writing and will initiate mid-level elevation and may continue elevation as needed, as provided in Section IV. Completion of the elevation process should be within 60 calendar days of receipt of written notification to initiate elevation. Following completion of elevation without resolution, EPA will not participate in this MOU process as to that particular project section. If, subsequent to EPA's withdrawal, new information arises or the proposed project is changed in some material way, EPA will note the new information or project changes in writing to the other Signatory Agencies, and will once again participate in this MOU process as to the subject project section.

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However, the EPA agrees to not revisit previous Checkpoint decisions, unless it is necessary due to availability of substantive new information.

3. **Appointment of Elevation Representatives**. Each Signatory Agency will identify the appropriate representatives for elevation. This process is described in more detail in Section IV of the MOU.

4. **Focus of the MOU**. The focus of the MOU is the formal commitment of Signatory Agencies for early and continuous involvement in HST project development. The required steps are shown in Figure 1, *Overview of the California HST Program MOU Process.*

5. **FRA and Authority Responsibilities**. FRA is the Federal lead agency and is ultimately responsible for implementation of this MOU. Generally, the specific activities outlined in this section are performed by the Authority in consultation with FRA; including preparing information packets, convening meetings, addressing agency responses, and initiating the mid-level elevation briefing paper. FRA is responsible for issuing closure letters for the checkpoints.

6. **Checkpoints**. The integration process comprises three checkpoints, which punctuate ongoing coordination efforts. These checkpoints are:

   (a) Definition of Purpose and Need for the Tier 2 HST project;

   (b) Identification of the Range of Alternatives to be Studied in the Project (Tier 2) EIR/EIS; and

   (c) Preliminary LEDPA Determination; USACE Section 408 Draft Response ; and Draft Mitigation Plan (DMP) consistent with 33 C.F.R. Part 332 and 40 C.F.R. Part 230 (73 FR 19,593 dated April 10, 2008).

   A diagram outlining the coordination and checkpoints process is below as Figure 2. Appendix B outlines the data or analysis that should be included in the checkpoint information packets.

7. **Participants**. All Signatory Agencies may participate in the checkpoints. The level of participation by the agencies differs by agency and by checkpoint as described in Table 1, *Types of Response by Agency and Checkpoint*. The flow of information and decision points within each checkpoint is described in Figure 2, *Coordination and Checkpoint Process*.

Figure 2. Coordination and Checkpoint Process[2,3]

1. Start with informal coordination process for information exchange and agency input.

Authority in consultation with FRA organizes a Coordination meeting with Responding Agencies. Authority sends Responding Agencies an informational packet at least 14 days prior to the Coordination Meeting.

↓

All Signatory Agencies participate in Coordination meeting(s) to discuss the project, checkpoints, and timelines, exchange information and address questions. Agencies continue to share information and provide input.

2. When ready for formal Checkpoint process, proceed as follows:

Authority in consultation with FRA organizes a Checkpoint meeting/call for final discussion. Authority sends checkpoint information packet at least 14 days prior to the Checkpoint meeting.

↓

All Signatory Agencies participate in Checkpoint meeting.

↓

Authority sends formal written request for Responding Agencies' responses on Checkpoint.

↓

Responding Agencies send written response to Authority's Checkpoint request within 30 calendar days.

↓

FRA sends letter to Responding Agencies describing the FRA's final decision for Checkpoint.

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[2] If the response is Concurrence, Recommendation, or Agreement – Authority and FRA proceed to next Checkpoint.

[3] If response is Non-Concurrence, Not Recommend, or Disagreement with request to elevate – FRA initiates mid-level elevation.

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8. **Coordination Meetings**. The integration process may involve a series of coordination meetings to exchange information about the HST project section and potential impacts. While in-person meetings are preferred, the meetings may occur by conference call or web meeting. Among other objectives, coordination meetings provide an opportunity for the Responding Agencies to identify what additional information will be necessary to make a decision about an upcoming checkpoint. Care should be taken in scheduling meetings, such that they are well-organized, are not in conflict with meetings scheduled for other HST sections, and focused on making progress towards a specific project issue or issues. Timeframes for information exchange and response will be mutually determined by the Signatory Agencies on a HST project section or alignment location.

9. **Checkpoint Meetings**. A Checkpoint is initiated when the Authority sends a checkpoint informational packet to the Signatory Agencies. The Authority will convene a "checkpoint meeting" when they determine it is appropriate and necessary to make a checkpoint decision. If a disagreement or non-concurrence is pending, this should be identified by the Signatory Agency raising the disagreement or non-concurrence at or preferably before the checkpoint meeting. Throughout this MOU process, all Signatory Agencies share responsibility for providing informal "heads up" of pending problems/potential issues as early as possible so that the other agencies can begin to prepare for a mid-level elevation or other intervention before the formal responses are made. If a mid-level elevation appears likely, the Authority should begin framing the elevation briefing paper, coordinating the development of the briefing paper with the Signatory Agencies, and scheduling the mid-level elevation during or immediately after the checkpoint meeting.

10. **Information Packet**. The Authority is responsible for sending information packets to the Signatory Agencies at least 14 calendar days or as otherwise agreed upon timeframe in advance of each checkpoint meeting. Information packets should identify critical issues of concern to the other Signatory Agencies. As the Authority is preparing the information packet, issues should be identified and communicated informally to the Signatory Agencies.

11. **Authority Request for Response and Responding Agency Responses.** Following a checkpoint meeting, the Authority will send the Responding Agencies a request for response. Upon receipt of a request for response, each agency that chooses to respond will send the response in writing or by e-mail to the Authority and FRA within 30 calendar days. The response will be an agreement or disagreement. Additionally, the USACE may submit a concurrence or non-concurrence concerning

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the Preliminary LEDPA/ Draft Mitigation Plan (DMP). Also, the USACE District-level, would either preliminarily recommend or not recommend Section 408 approval at checkpoint C as specified in Table 1, Types of Response by Agency. The response terms (agree/disagree and for the USACE, concur/non-concur and/or recommend/not recommend) will reflect the regulatory responsibilities of the Responding Agencies at different points in the NEPA, Section 404, and Section 408 processes. Table 1 summarizes the only types of response an agency may give at a checkpoint.

Table 1. Types of Response by Agency.

Agency	Purpose & Need	Alternatives	Preliminary LEDPA/DMP	USACE Section 408 Draft Response
USACE	Agree/Disagree	Agree/Disagree	Concur/Non-concur	Recommend/Not Recommend
EPA	Agree/Disagree	Agree/Disagree	Agree/Disagree	N/A

12. **Types of Response**. As summarized in Figure 2, *Coordination and Checkpoint Process*, the Responding Agency sends a formal agreement or disagreement, (and the USACE may also send a concurrence or non-concurrence at the Preliminary LEDPA/DMP and recommend/not recommend at the USACE Section 408 Draft Response checkpoint) to the Authority, as follows:

    (a) **Agreement/Disagreement**. The Responding Agency provides a written response agreeing or disagreeing with the Authority's checkpoint proposal. If there is a disagreement, then the Responding Agency's letter must identify the basis for the disagreement. If the Responding Agency does not respond within 30 calendar days, the Authority and FRA may not assume the Responding Agency agrees but may proceed with the environmental review process and EIS preparation and the Authority and FRA may initiate the mid-level elevation, and may continue elevation as needed. In the case of a disagreement, the Authority and FRA must convene a mid-level elevation.

    If the mid-level elevation does not resolve the issues, the Authority and FRA at their discretion may: (i) continue to attempt to resolve the problem through

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other forms of dispute resolution (such as continued elevation or use of a facilitator), (ii) may proceed without resolution, or (iii) may proceed while concurrently attempting to resolve the problem. If the Authority and FRA choose to move on, any Responding Agency may concurrently request a senior-level elevation within seven calendar days of notification by the Authority of the decision to proceed. The senior-elevation group will decide whether or not they wish to review the issue.

(b) **Concurrence/Non-concurrence by the USACE**. The USACE provides a written response concurring or non-concurring with the Preliminary LEDPA and DMP at checkpoint C. If the USACE issues a non-concurrence letter, then it must identify the basis for non-concurrence. If the USACE does not respond within 30 calendar days, the Authority and FRA may initiate the mid-level elevation, and may continue elevation as needed. If the Authority and FRA receive a non-concurrence from the USACE, the Authority and FRA may not proceed until the USACE concurs with the Preliminary LEDPA and DMP.

(c) **Recommend/Not recommend by a USACE District Office**. Checkpoint C also requires a written response from USACE District Office(s) preliminarily recommending or not recommending Section 408 approval. If the USACE District Office's response letter does not preliminarily recommend Section 408 approval, then it must identify the basis for the decision. If the USACE District Office does not respond within 30 calendar days, the Authority and FRA may initiate the mid-level elevation, and may continue elevation as needed. If the Authority and FRA receive a "not recommending" letter from the USACE District Office(s), the Authority and FRA may not proceed until the USACE District Office(s) preliminarily recommends Section 408 approval.

13. **Closure at Each Checkpoint.** At each checkpoint, the FRA, in consultation with the Authority, will send the Signatory Agencies a letter identifying the status of each issue that received a disagreement or non-concurrence. This letter will be sent before the next checkpoint, before the draft EIS is issued, before the final EIS is issued, or within 90 days after the checkpoint, whichever is sooner. If a mid-level elevation has been triggered, and resolution is reached prior to the mid-level elevation, the Authority will send notification to the Signatory Agencies.

14. **Mid-level elevation.** The procedure for the mid-level elevation is described in Section IV.

Section IV. Elevation Procedures and Other Region-Specific Dispute Resolution Tools

Elevation, as necessary, is encouraged. The elevation process is intended to resolve issues quickly, and to maintain constructive working relationships. This section provides an overview of the HST project section or alignment location specific dispute resolution tools available under this MOU. Detailed guidance and recommendations are available in Appendix A. In keeping with the spirit of the integration process, nothing in this section precludes any other traditional or nontraditional approaches to dispute resolution.

1. **Flexibility**. The specific dispute resolution tools are intended to be expeditious, practical, respectful, and accessible. All the tools are available at any point on a voluntary basis. However, the mid-level elevation is required for disagreements or non-concurrences. For these, the briefing paper should be used as described in Appendix A. The mid-level elevation may be used any time (including outside the checkpoints) all the Signatory Agencies agree it would be effective.

2. **Representatives for Elevation**. When the FRA initiates the NEPA/404/408 integration process, it will request that each Responding Agency initiate its internal actions for preparing to engage in the elevation process, including the review of the briefing paper and confirmation of the appropriate mid-level and senior-level representatives who have been identified to speak for their agency (Appendix A). The senior-level representative should include the top regional/state decision-maker for each agency, or his/her designee.

3. **The Mid-level Elevation**. The mid-level elevation is a tool to resolve disagreement or non-concurrence at a checkpoint. Though the Responding Agencies should have given the Authority and FRA informal notice prior to and at the checkpoint meeting, the formal trigger for a mid-level elevation is the receipt by the Authority and FRA of a letter of disagreement or non-concurrence or non-recommendation as described in Section III.12(b),12(c), and 12(d) above or a letter requesting formal elevation to resolve an issue(s). Upon receiving the letter, the Authority has 30 calendar days to convene a mid-level elevation. Convening a mid-level elevation requires the Authority to:

   (a) Notify and schedule the managers who will resolve the dispute and the staff who will brief them;

   (b) Coordinate, develop, and distribute an elevation briefing paper; and

   (c) Arrange for and fund a neutral facilitator, as necessary.

4. **Briefing Paper**. A cooperatively prepared briefing paper is a key component of the mid-level elevation and is recommended for subsequent elevation to senior

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managers if the latter elevation is determined to be necessary. The briefing paper should be sent by the Authority to the mid-level managers along with a draft agenda at least 10 calendar days prior to the mid-level elevation. The briefing paper should follow the format as discussed in Appendix A.

5. **Senior-level elevation**. If the mid-level elevation does not result in resolution, the involved Signatory Agencies may raise the issue to the senior management. Eventually, an issue may need to enter a more formal dispute resolution process organized by the FRA.

Section V. Modification and Termination

1. **Modification.**

   (a) Any Signatory Agency may propose modifications to this MOU.

   (b) Proposals for modification of timelines or methods for a specific HST project section or to the MOU will be circulated to all Signatory Agencies for review and comment. The agencies will have 30 calendar days from receipt of the proposed modification(s) to submit comments. Upon written acceptance of a proposal by all Signatory Agencies, the Authority will circulate an MOU amendment for execution.

   (c) The amended MOU will become effective 15 calendar days after execution by the last Signatory Agency and will supersede any previous version of the MOU.

2. **Termination.** Any Signatory Agency may terminate participation in this MOU upon 30 days written notice to all other Signatory Agencies.

Section VI. General Provisions

1. The NEPA/404/408 integration process does not include all environmental review and permitting requirements. FRA as the Federal lead agency, in conjunction with the Authority as the state sponsoring agency, is responsible to determine purpose and need and the range of alternatives for analysis in NEPA documents, and is responsible for issuing the draft and final EIS and supporting documents in compliance with NEPA. The EPA has authority under the Clean Air Act section 309 to review and comment on the NEPA documents of other Federal agencies. This is independent of EPA's role in the NEPA/404/408 integration process. Specific approvals not addressed by this MOU include, but are not limited to, the following: any real estate permissions, Endangered Species Act Section 7 compliance, CWA

Section 401 water quality certification, Coastal Zone Management Act consistency determination, National Historic Preservation Act Section 106 compliance, and Department of Transportation Act Section 4(f) compliance.

2. Regulatory and resource agency participation in this process does not imply endorsement of all aspects of a specific HST project section. Nothing in this MOU is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the Signatory Agencies.

3. Documents, data, maps, and other information provided pursuant to this MOU may be pre-decisional (intra-agency or inter-agency memoranda or letters) or privileged FRA, Authority, EPA, or USACE information, or information that is prohibited from disclosure pursuant to applicable law. For public requests of such information, under the Freedom of Information Act or otherwise, the releasing party will notify the other Signatory Agencies and provide an opportunity to comment on whether the information is pre-decisional, privileged, or prohibited from disclosure by applicable law. To the extent permissible by law, any recipient of this information agrees not to transmit or otherwise divulge this information without prior approval from FRA, Authority, EPA, or USACE as appropriate.

4. A Signatory Agency's participation in the integration process is not equivalent to serving as a cooperating agency as defined by regulations promulgated by the Council on Environmental Quality, 40 C.F.R. Part 1500, which is a separate process established through a formal written agreement from a Signatory Agency to the Federal lead agency.

5. As required by the Anti-deficiency Act, 31 U.S.C. Sections 1341 and 1342, all commitments made by Federal agencies in this MOU are subject to the availability of appropriated funds. Nothing in this MOU, in and of itself, obligates Federal agencies to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with agency budget priorities. The non-Federal signatory to this MOU agree not to submit a claim for compensation for services rendered to any Federal agency in connection with any activities it carries out in furtherance of this MOU. This MOU does not exempt the non-Federal parties from Federal policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

The obligations under this MOU of the State of California or its political subdivision are subject to the availability of appropriated funds. No liability shall accrue to the State of California or its political subdivision for failure to perform any obligation under this MOU in the event that funds are not appropriated.

6. This MOU does not confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
7. If all Signatory Agencies decide not to participate in this agreement any further, the FRA will provide written documentation to all Signatory Agencies that the MOU is terminated.
8. The parties recognize that EPA and the USACE have existing agreements on the processes that those agencies will use to collaboratively and expeditiously resolve specific issues in Section 404 permit program implementation. Nothing in this MOU is intended to supersede, expand, or void any part of those existing agreements. If either the EPA or the USACE initiates any dispute resolution mechanism under these existing agreements as to an issue arising in the context of the HST system, the initiating agency will communicate that fact to the other parties of this agreement in writing. EPA and the USACE will keep the other Signatory Agencies of this MOU apprised of any developments in the dispute resolution process.

Section VII. Effective Date and Duration

This MOU will become effective on the date of signature by the last party. This MOU shall remain in force, subject to Section II.2, until whichever of these events occurs first: a) the USACE issues the last of the RODs, Section 404 permit decisions, and 408 permit decisions, required for the last Tier 2 EIS necessary to complete the HST System; or b) the MOU is terminated pursuant to Section V.2.

IN WITNESS WHEREOF, this MOU is executed by the Federal Railroad Administration, California High-Speed Rail Authority, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency, acting by and through their respective authorized officers.

29 Nov 2010

Scott F. "Rock" Donahue, P.E
Brigadier General, U.S. Army
Commanding

Date

12/10/10

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region IX

Date

12/21/10

Mark E. Yachmetz
Associate Administrator
Office of Railroad Policy and Development
Federal Railroad Administration

Date

12/17/2010

Roelof van Ark
Executive Director
California High-Speed Rail Authority

Date

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Appendix A. Dispute Resolution System

The Briefing Paper

At every mid-level elevation, staff of each of the Signatory Agencies involved in the dispute will prepare a cooperative briefing paper. This paper may also be used for senior-level elevations. The briefing paper should offer salient information precisely framing the issues requiring resolution. The briefing paper:

- Encourages neutral presentation of issues, rather than polarizing;
- Maximizes the likelihood of resolution of at least some of the issues as staff prepare for the elevation;
- Ensures that the problem statement is robust, clear, and focused; and
- Fosters improved communication.

The briefing paper should be short and will need to be developed quickly – in 21 calendar days in most cases. A format for the briefing paper is presented below.

The issues to be addressed in the briefing paper should be framed at the checkpoint meeting. The Authority should begin the first draft shortly after the checkpoint meeting. Once the Responding Agencies reply formally to the Authority's request for responses, the Authority will complete the first draft of the briefing paper and send it to all the Signatory Agencies. A person from each agency responsible for the development of the briefing paper (a point of contact) should be identified informally at the checkpoint meeting, if possible, and formally in the response letter.

Upon receipt of the first draft, any of the Signatory Agencies may contribute to the briefing paper; use of the "Track Changes" tool in Word is preferred. A single set of changes will be sent by each agency's point of contact. The Authority may either accept the changes or move them to one of the "alternate" columns, and this document becomes the second draft. The Authority then distributes the second draft to the contributors and makes requested changes prior to sending a final document to the elevation decision-makers. There may be other iterations as needed and as the schedule allows.

Informal telephone conversations and e-mails should occur in support of all stages of the development of the briefing paper.

The specific timing for reviews, changes, and incorporation of changes may be modified by mutual agreement at or shortly after the checkpoint meeting, or whenever a mid-level elevation is first anticipated.

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When the FRA initiates the NEPA/404/408 integration process, it will request that each Responding Agency initiate its internal actions for preparing to engage in the elevation process, including the review of the briefing paper and confirmation of the appropriate mid-level and senior-level representatives who have been identified to speak for their agency. The following are the identified mid-level and senior level representatives for each agency.

Signatory Agency	**Mid-level Elevation**	**Senior-level Elevation**
EPA	Division Director, Communities & Ecosystems Division	Regional Administrator of Region IX
USACE	District Commander	South Pacific Division Commander
FRA	Chief, Environment and Systems Planning Division	Associate Administrator, Railroad Policy and Development
Authority	Deputy Director	Executive Director

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Figure A-1. Sample Briefing Paper

Project Name: Checkpoint:		
As the briefing paper is developed, alternate views that are not easily incorporated into the main body of the document can be dropped into columns on the right, and sized to fit in whatever way makes graphic sense. If the alternate view columns prove to be unnecessary, they can be taken out.	Alternate comments	Alternate comments
Background:		
Issue 1: A Word or Phrase Naming the Issue. A succinct summary. Ideally, the list of issues will have been sketched out at the checkpoint meeting. QA: At the end of the summary of the issue, end with a question. This helps keep the decision-makers in the elevation focused. QB: Sometimes within an issue there is more than one question. For instance, there might be a question about whether an alternative is practicable or not, and there might be a separate question about which agency ought to make the determination on a specific technical issue.		
Issue 2: A Word or Phrase Naming the Second Issue. A succinct summary. Q:		
Resolution:		
Issues Still Requiring Resolution:		
Dates: Checkpoint meeting ___/___/___; Request for Response ___/___/___; Negative assessment or non-concurrence ___/___/___; Mid-level elevation; ___/___/___; Resolution ___/___/___.		

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Use of Facilitators

The use of a facilitator may be an effective way to conduct a coordination meeting, checkpoint meeting, or elevation. Here are some approaches to involving facilitators that have been useful in the past:

The process for hiring the facilitator should be as collaborative as practicable. Involving agencies in the selection of a facilitator sets a neutral tone from the outset.

Involve the facilitator in the development of the agenda.

Strike the right balance in terms of substantive knowledge. A facilitator who has to stop and ask 'What is section 404 of the CWA?' is likely to delay resolution. Yet it is not necessary to find someone who knows the details of the HST process and each of the statutes and all of the regulations. It is probably more important that the facilitator be truly skilled at facilitation and have a general natural resources background.

Timely retention of a facilitator. Identifying and hiring a facilitator on short notice can be a challenge, but not an insurmountable one. Many of the agencies participating in this MOU have trained facilitators who could assist with the meeting or elevation. The U.S. Institute for Environmental Conflict Resolution maintains a roster of qualified facilitators who can be easily accessed by many federal agencies.

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Appendix B. Data or Analysis for NEPA/404/408 Integration Checkpoints

The following sets forth the data or analysis that should be provided at each checkpoint.

Checkpoint A: Purpose and Need

The purpose and need statement should be broad enough to allow for consideration of a range of reasonable and practicable alternatives that are commensurate with the level of environmental impacts, but specific enough that the range of alternatives may be appropriately focused in light of the Tier 1 EIS/EIR programmatic decisions. The needs of the project should take scoping comments into account and be presented in terms of quantified deficiencies (i.e., existing deficiencies, future without-project deficiencies, or both) as compared to some relevant local, regional, state, or national standard or goal. FRA as the NEPA lead Federal agency is given substantial deference in determining its NEPA purpose and need statement. The purpose and need statement should be coordinated with appropriate agencies. The EPA and USACE agreement on the purpose and need statement will indicate that the information is sufficiently clear and detailed for the USACE to formulate the basic and overall project purpose pursuant to the CWA section 404(b)(1) Guidelines and Section 408, and can be used with confidence in the next stage.

Checkpoint B: Identification of Project Alternatives for Analysis in the DEIS

In letters dated July 22, 2005, the EPA and the USACE concurred with the alternative most likely to contain the LEDPA for the statewide California HST Project. In addition, the USACE concurred in a letter dated May 8, 2008 and EPA concurred in a letter dated April 30, 2008 that the Pacheco Pass, San Francisco, and San Jose Termini is the program alternative likely to contain the LEDPA for the HST system from the Bay Area to the Central Valley. Copies of these letters are incorporated in the MOU as Appendix C. The decisions were commensurate with the level and breadth of the environmental data made available to the USACE and EPA at that time and were focused on those Section 404 and NEPA issues that were ripe for consideration. However, the prior Tier 1 concurrences do not obviate the need for FRA and the Authority to fully comply with all requirements of the CWA section 404(b)(1) Guidelines (40 C.F.R. Part 230) during the preparation of subsequent Tier 2 (project-level) EISs nor do they fulfill the USACE's public interest review process and determination pursuant to 33 C.F.R. Part 320.4(a). New information or changes in project decisions should be carefully considered when developing alternatives and may require Tier 1 alternatives to be revisited, if necessary.

Standardized alternatives evaluation criteria will be used for each HST project EIR/EIS process in order to consider a reasonable range of alternatives and to identify those alternatives that satisfy the project purpose and need, and overall project purpose that are feasible and practicable, and avoid or minimize environmental impacts. HST Project alternatives will be appropriately analyzed and documented in accordance with the following:

1) A detailed project description of the alternatives with engineering layouts on aerials and cross sections.

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2) A brief discussion of the reasons for considering but eliminating project-level alternatives from further detailed study should be provided. An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose(s).
3) Summary presentation of environmental resources and constraints using data gathered and evaluated that should include:
    a. A delineation of potential special aquatic sites and waters of the U.S. should be provided through the use of remote sensing imagery (color infrared aerials and digital raster graphics or digital elevation models) overlaid with existing data; with photographs or video of each feature, maps showing the location of each feature, and a preliminary assessment of functions and services by indicating whether the feature exhibits medium to high hydrologic, water quality, and habitat integrity; whether the feature is important to associated or adjacent critical habitat, protected species, or public or protected open spaces.
    b. Maps that show the occurrences of all associated sensitive species that have been identified within the survey area in relation to project features, including federally listed endangered and threatened species and designated critical habitat including the size of the populations in terms of numbers of individuals and habitat occupied. The maps should also include other relevant data such the 100-year floodplain, biological reserves or preserves, wildlife crossings, and habitat conservation planning core and linkage areas.
    c. Maps clearly depicting lands, easements and rights-of-way necessary for a proposed alteration or modification to a Federally authorized Project.

Checkpoint C: Preliminary LEDPA Determination

1) The project activities should be clearly depicted by providing:
    a. Description and plans detailing temporary impacts including: grading, clearing and grubbing, and water diversion activities; location of construction staging areas, access areas, and borrow and storage sites; and the duration of these activities;
    b. Descriptions and plans detailing permanent impacts including: location, size, and depth of structures or fill material; quantity and composition of fill material; changes in topography and vegetation; and
    c. Description and/or plans of operational or long-term activities.
2) The impacts must be clearly depicted and accurately characterized by providing a detailed description and quantification (in estimated acres of impacts) of the project temporary, permanent, and indirect and cumulative impacts on special aquatic sites and other waters of the U.S., including the type of impact (e.g., habitat removal, fragmentation, introduction of exotic species) and its magnitude. These effects must be evaluated at the appropriate local

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or regional context. Any avoidance and minimization measures in design should be well-documented and quantified in terms of acres of impacts avoided associated with each avoidance or minimization measure.

3) A detailed (rapid assessment or better) assessment of the functions and services of special aquatic sites and other waters of the U.S. is necessary to provide adequate analysis of impacts. The assessment should determine which functions are performed by the wetland/waters, the services of those functions, and how the project will affect the continued performance of the identified functions. The precise assessment methodology for characterizing the functions and services of aquatic resources should be determined in close consultation with the USACE.
4) Consideration of temporary, permanent, and indirect and cumulative impacts on biological resources, including sensitive species including federally listed endangered and threatened species and designated critical habitat.
5) Consideration of temporary, permanent, and cumulative impacts on cultural resources, including sites listed on the National Register of Historic Places or National Historic Landmarks.

Checkpoint C: Draft Mitigation Plan

1) Compensatory mitigation plan to offset permanent losses of waters of the U.S., including a statement describing how temporary losses of waters of the U.S. will be minimized to the maximum extent practicable; or, justification explaining why compensatory mitigation should not be required.
    a. Any compensatory mitigation proposed should be based on the watershed approach and should comply with the final mitigation rule issued by the EPA and the USACE on April 10, 2008, and USACE-issued Habitat Mitigation and Monitoring Guidelines.
    b. A description of any compensatory mitigation proposed should specify the amount, type, and location of compensatory mitigation, including any out-of-kind compensation, or indicate the intention to use an approved mitigation bank or in-lieu fee program.
    c. If the mitigation proposal includes project activities to create, restore, and/or enhance waters of the U.S. and aquatic ecosystems, a prospectus of candidate mitigation sites should be provided that includes:
        i. A detailed description of proposed activities to create, restore, and/or enhance waters of the U.S. and aquatic ecosystems including the amount, type, and location;
        ii. A jurisdictional delineation of existing features and a detailed assessment of the existing functions and services of special aquatic sites and other waters of the U.S;

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iii. A detailed assessment of the proposed functions and services of special aquatic sites and other waters of the U.S.;

iv. Discussion of buffer areas and habitat linkages;

v. Discussion of hydrology and hydraulic design considerations;

vi. Listing of species to be used in carrying out mitigation;

vii. Cost estimate and feasibility analysis;

viii. Mitigation success criteria and monitoring methods;

ix. Adaptive management plans;

x. Long term maintenance and management plans;

xi. Financial assurances; and

xii. Long-term site protection instruments.

Checkpoint C: USACE Section 408 Draft Response

When the Authority has provided sufficient engineering and hydraulic analysis, the USACE District shall determine if the types of alterations/modifications to a Federal flood control facility would require approval by the District Engineer or by U.S. Army Corps of Engineers Headquarters (HQUSACE) under 33 U.S.C 408 (see "Determination of Approval Level" on Figure 1: Overview of the California HST Program MOU Process). If proposed alterations/modifications are minor, low impact modifications, the Authority shall coordinate with the local sponsor of the flood control facility and/or the USACE District, as appropriate. NEPA compliance is still required for minor modifications; therefore, the level of documentation should be coordinated with the USACE District or local sponsor. The District Engineer approval process under 33 U.S.C. Section 408 is not depicted in Figure 1.

If HQUSACE approval is required, the applicable USACE District shall provide review and information of the required risk analysis, safety assurance review, and policy compliance necessary to make a preliminary recommendation for each alteration or modification requiring HQUSACE approval. The Authority shall provide the safety assurance review plan and all the necessary technical analysis and supporting documentation for the following:

1) Risk Analysis: The Authority shall provide an analysis of the risk and uncertainty through evaluation of potential system impacts limited to the hydrologic and hydraulic parameters. Impacts will be determined by comparing performance parameters as presented in ER 1110-2-101 for the existing or base condition to the condition resulting from the project alteration/modification. The base performance conditions are defined by authorized project features. The USACE has provided technical guidance in EM 1110-2- 1619, but has yet to fully develop the guidance needed to analyze risk and uncertainty for the geotechnical and structural performance of a system. Until such guidance is developed, deterministic procedures are appropriate for demonstrating geotechnical and structural integrity under the full range of loading conditions.

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2) Safety Assurance Review (SAR): Approval of the Safety Assurance Review (SAR) Plan is required by the USACE Division. When the USACE District is concurrently performing investigations that will entail a safety assurance review at the project location, the SAR for the overarching study will suffice but must be completed prior to initiation of construction. In cases where no USACE investigations are ongoing, an SAR on the proposed alteration/modification must be performed by the Authority in advance of Checkpoint C in accordance with EC 1165-2-209. The USACE District will utilize the SAR results when making a preliminary 408 District recommendation.

3) Policy Compliance: The applicable USACE District shall review and certify the legal/policy/technical and quality management of the decision document for each alteration or modification requiring HQUSACE approval.

A 60 percent or greater engineering design as well as any additional information specified in the (a) October 23, 2006, CECW-PB Memorandum for Major Subordinate Commands, SUBJECT: Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineer Projects and (b) November 17, 2008, CECW-PB Memorandum from the Director of Civil Works titled "Clarification Guidance on the Policy and Procedural Guidance for the Approval of Modifications and Alteration of Corps of Engineers Projects" is required for a USACE District to provide a preliminary recommendation.

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Appendix C. Program-Level/Tier 1 NEPA/404 Integration Letters

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

July 22, 2005

Mark Yachmetz
Environmental Program Manager
Federal Railroad Administration
1120 Vermont Avenue, NW, MS 20
Washington, D.C. 20590

Subject: California High Speed Train System Programmatic Environmental Impact Statement Request for Concurrence

Dear Mr. Yachmetz:

The U.S. Environmental Protection Agency (EPA) is writing in response to your request of July 1st, 2005, for concurrence on the range of alternatives that are "most likely to contain" the least environmentally damaging practicable alternative (LEDPA) for the proposed **California High Speed Train System**. Following our review of the Administrative Draft of the Final Programmatic Environmental Impact Statement (PEIS) submitted to EPA on July 11, 2005, we concur that the preferred alignments and station options, as listed in the attachment, are most likely to contain the LEDPA, a requirement of Section 404 of the Clean Water Act. EPA's concurrence encompasses the preferred High Speed Train alignment and station alternatives in each of the five geographic areas of the project: Bay Area to Merced, Sacramento to Bakersfield, Bakersfield to Los Angeles, Los Angeles to San Diego via Inland Empire, and Los Angeles to San Diego via Orange County.

Through a Cooperating Agency Memorandum of Understanding (MOU) signed in July 2003, EPA has coordinated with the Federal Railroad Administration (FRA) and the California High Speed Rail Authority (CHSRA) to establish agreement on decisions made in the environmental review process and to avoid revisiting those decisions at a later date. This coordination is accomplished through the early integration of the requirements of the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act (CWA) and EPA concurrence with decisions made at significant points in the project development.

The PEIS, or "Tier 1" evaluation, provides landscape-level analysis of potential environmental impacts. The Tier 1 process is expected to identify those alternatives that will be analyzed in detail at the "Tier 2" project-level evaluation. As outlined in the MOU, EPA's concurrence establishes agreement on those alternatives that are most likely to contain the LEDPA at this Tier 1 programmatic level and should, therefore, be advanced for further study at Tier 2. During the Tier 2 project-level environmental review, EPA will continue to coordinate with FRA and CHSRA to determine which routes are the LEDPA.

Only alternatives that are the least damaging to aquatic resources and are practicable (feasible and in light of cost, logistics, and technology) can be permitted. Through this early integration and concurrence process, EPA has provided feedback that will aide the Tier 2 project-

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level analyses. We provide the following comments associated with the determination of the routes most likely to contain the LEDPA. These comments should be incorporated in the Final PEIS.

Bay Area to the Central Valley

Following EPA's review of the Draft PEIS in August 2004, EPA identified potential impacts to aquatic resources of national importance (CWA Section 404(q), 33 U.S.C. 1344(q)), wetlands, water quality, wildlife habitat, and endangered species that would result from the alternative alignments presented for the Diablo Direct and Pacheco alignments within the Bay Area to Merced region. The proposals described in the Draft PEIS for a high speed train route following the Diablo Direct alignments present federal permitting challenges because they would fragment the Diablo Range, bisect aquatic resources of national importance (including Orestimba Creek), and impact State parks, wilderness, and private, state, and federal conservation and mitigation lands. The Draft PEIS identified that a proposed route through the Pacheco Pass may result in significant impacts to waters of the United States, resulting in similar permitting difficulties.

Because of the potentially adverse impacts from the Diablo Direct and Pacheco alignments, we commend FRA and CHSRA for deferring a decision on an alignment connecting the Bay Area to Merced until a supplemental analysis can be completed to demonstrate to the public and the decision-makers that all variations of alternatives connecting the Bay Area to the Central Valley have been fully evaluated consistent with the CWA Section 404(b)(1) Guidelines.

Sacramento to Stockton

FRA and CHSRA have recommended that both the Union Pacific Railroad (UPRR) and Central California Traction (CCT) alignments be carried forward in the Tier 2 project-level NEPA documents. We understand that the UPRR alignment is preferred by FRA and CHSRA because it is an active freight corridor, is slightly shorter with shorter travel times (1 minute), and has lower construction costs (estimated $150 million) and that the CCT alignment is an abandoned freight corridor that is identified for a community-supported rails-to-trails project. However, the UPRR alignment would have potentially greater impacts to federally regulated waters than the CCT alignment, and the UPRR alignment is not clearly the alternative most likely to contain the LEDPA. In addition, the UPRR alignment crosses important aquatic conservation lands including Valensin Ranch and Snake Marsh. We agree with the decision to carry both alignments forward for study at the project-level to ensure compliance with the CWA and successful identification of the LEDPA.

Fresno to Bakersfield

EPA supports the decision by CHSRA and FRA to both (1) identify the Burlington Northern Santa Fe (BNSF) alignment as the preferred option for high speed train service connecting Fresno to Bakersfield, and (2) fully evaluate an additional alignment, such as the UPRR alignment, in project-level environmental review should the proposed additional planning study identify a feasible and practicable alignment that is likely to be less damaging to water and biological resources.

The BNSF and UPRR alignment have similar potential impacts to aquatic resources such as wetlands and streams, while the BNSF alignment has greater impacts to wildlife habitat. We are aware that local biologists are concerned about the potential impact that the BNSF alignment may have on movement corridors for threatened and endangered species and the extent of conservation lands linking the last remaining stands of native habitat, including alkali grasslands and alkali sink scrub. We are confident that the decision to analyze the BNSF alignment, as well

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as any alternative that is demonstrated to be less damaging to biological and water resources through the additional proposed study, will result in a high speed train alignment most likely to contain the LEDPA.

Carroll Canyon an. Miramar Road

As noted following in our comment letter on the Programmatic DEIS, both the Carroll Canyon and Miramar Road alignments for connecting Mira Mesa to San Diego may affect downstream lagoons. The Carroll Canyon alignment will also affect the ability of this region to absorb seasonal and annual flood waters, will increase erosion and sedimentation, and may negatively impact the water quality of the downstream Los Penasquitos Lagoon. Because the Carroll Canyon alignment would affect more vernal pools and more non-wetlands waters than the Miramar Road route, and because this area has been designated as a multiple habitat planning area (MHPA) through the San Diego Multiple Species Conservation Plan, EPA supports FRA and CHSRA's decision to analyze both the Miramar Road and the Carroll Canyon alignments at the project-level.

Thank you for this opportunity to comment on the high speed train alternatives most likely to contain the LEDPA. We have provided the above comments, along with continuous interagency communication and coordination, to aide in the development of future project-level analyses for a high speed train system for California. We look forward to reviewing and commenting on future Tier 2, project-level analyses for this important State-wide project. In addition, we are available to provide guidance and input related to establishing a framework for mitigation and future studies regarding the Bay Area to Central Valley and Fresno to Bakersfield alignments.

EPA will provide comments on the Final PEIS, pursuant to our NEPA/Clean Air Act Section 309 authority, once it is available for public review. This concludes the interagency concurrence process for the Tier I programmatic environmental review process, as established by the MOU. If you have any questions, please feel free to contact me at 415-972-3843, or Nova Blazej, Transportation Team Leader. Nova can be reached at 415-972-3846 or blazej.nova@epa.gov.

Sincerely,

Enrique Manzanilla, Director
Communities and Ecosystems Division

cc: Mehdi Morshed, California High Speed Rail Authority
David Castanon, Los Angeles Army Corps of Engineers
Wayne White, U.S. Fish and Wildlife Service
Crawford Tuttle, California Resources Agency
James Branham, California Environmental Protection Agency

Enclosure: EPA Concurrence on High Speed Train Alignment and Station Alternatives Most Likely to Contain the LEDPA

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EPA Concurrence on High Speed Train Alignment and Station Alternatives that are Most Likely to Contain the Least Environmentally Damaging Practicable Alternative

EPA concurs with the following High Speed Train alignment and station alternatives as "most likely to contain the least environmentally damaging practicable alternative " to be carried forward for analysis in future Tier 2 project level analyses:

Bay Area to Merced:

- **Bay Area to Central Valley:**

Corridor bounded by, an including, the Pacheco Pass (SR-152) to the south, the Altamont Pass (I-580) to the north, the BNSF Corridor to the east, and the Caltrain Corridor to the west, excluding Henry Coe State Park and station options at Los Banos.

- **San Francisco Peninsula:**

Caltrain Corridor (Shared Use Four-Track)
Potential Station Locations: downtown San Francisco (Transbay Terminal), San Francisco Airport (Millbrae), and Redwood City or Palo Alto

- **East Bay Alignment:**

Hayward Line to I-880 (Hayward Alignment/I-880)
Potential Station Locations: West Oakland or 12th Street/City Center, Union City, and San Jose

Sacramento to Bakersfield:

- **Sacramento to Stockton:**

Union Pacific Railroad (UPRR) and Central California Traction (CCT)
Potential Station Locations: downtown Sacramento, downtown Stockton

- **Stockton to Merced:**

Burlington Northern Santa Fe (BNSF) analyzed with and without an Express Loop
Potential Station Locations: Modesto (Amtrak – Briggsmore) and Merced (downtown or Castle Air Force Base).

- **Merced to Fresno:**

BNSF
Potential Station Locations: Fresno Downtown

- **Fresno to Bakersfield:**

BNSF *(and any other practicable alternatives identified as being less damaging to water and/or biological resources following additional study to serve a potential Visalia Station)*
Potential Station Locations: downtown Bakersfield (Truxton)

Bakersfield to Los Angeles:

- Bakersfield to Sylmar:

SR-58/Soledad Canyon Corridor (Antelope Valley)
Potential Station Locations: Palmdale Airport Transportation Center

- **Sylmar to Los Angeles:**

Metrolink/UPRR

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Potential Station Locations: downtown Burbank (Burbank Metrolink Media Station) and Los Angeles Union Station

Los Angeles to San Diego via Inland Empire:

- **Los Angeles of March Air Reserve Base:**

UPRR Riverside/UPRR Colton Line
Potential Station Options: East San Gabriel Valley (City of Industry), Ontario Airport, and Riverside (UC Riverside)

- **March Air Reserve Base to Mira Mesa:**

I-215/I-15
Potential Station Locations: Temcula Valley (Murrieta) and Escondido

- **Mira Mesa to San Diego:**

Carroll Canyon or Miramar Road
Potential Station Locations: University City and Downtown San Diego (Santa Fe Depot)

Los Angeles to Orange County:

- **Los Angeles to Irvine:**

LOSSAN Corridor
Potential Station Locations: Norwalk, Anaheim Transportation Center, and Irvine Transportation Center.

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DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

July 22, 2005

REPLY TO
ATTENTION OF:

Office of the Chief
Regulatory Branch

Mr. Mark E. Yachmetz
Associate Administrator for Railroad Development
U.S. Department of Transportation
Federal Railroad Administration
1120 Vermont Avenue, N.W.
Washington, D.C. 20590

Dear Mr. Yachmetz:

I am responding to your request (dated July 11, 2005 and addressed to Mr. David J. Castanon) for concurrence on the alternative 'most likely to yield' the least environmentally damaging practicable alternative ("LEDPA") for the statewide **California High Speed Train Project** ("Project"). If approved and implemented, the Project would entail an approximate 700-mile-long high-speed train connecting San Diego, Los Angeles, the Central Valley, Sacramento and the Bay Area regions. The system would be grade-separated and capable of reaching speeds in excess of 200 miles per hour.

The Project's Draft Program Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") analyzes two primary 'system' alternatives, which include a proposed high-speed train alternative and a modal alternative, plus the required No Project/No Action alternative. In addition to the system alternatives, the Federal Railroad Administration ("FRA") and the project proponent, the California High Speed Rail Authority ("CHSRA"), evaluated a range of potential high-speed train corridors, alignments and associated station locations within the five regional areas. Under our Section 404 of the Clean Water Act purview, the Corps provided feedback on the evaluation of these alternatives and offered technical input pertaining to aquatic resources for the development of the Program EIR/EIS.

In accordance with the Project's 2003 Cooperating Agencies Memorandum of Understanding ("MOU") between the FRA, the U.S. Army Corps of Engineers ("Corps"), Federal Highway Administration, Federal Transit Administration, and U.S. Environmental Protection Agency, we offer our concurrence on the preferred high-speed train corridors/general alignments and general station locations identified in the attachments to your April 26, 2005 and July 11, 2005 correspondences. We have based our concurrence on the information and analyses provided in the *Staff Recommendations on Identifying Preferred Alignment and Station*

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Locations report (dated January, 2005), the screen check Draft Final Program EIR/EIS (dated June 24, 2005; and as amended July 19, 2005), and the supplemental information transmitted to our office July 11, 2005.

At this programmatic transportation planning stage, our concurrence on the alternative 'most likely to yield' the LEDPA represents a decision commensurate with the level and breadth of existing environmental data made available to the Corps. Moreover, such concurrence does not obviate the need for the FRA to fully comply with all requirements of the 404(b)(1) Guidelines during the preparation of any subsequent project-level EIS, at which time it is expected the CHSRA and/or FRA would seek Section 404 of the CWA and Section 10 of the Rivers and Harbors Act permits, as appropriate.

I am forwarding copies of this letter to Mr. Mehdi Morshed and Mr. Dan Leavitt, California High Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, California 95814; Mr. Enrique Manzanilla and Mr. Tim Vendlinski, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901; and Mr. Mark Littlefield, U.S. Fish and Wildlife Service, Ecological Services, 2800 Cottage Way, Room W-2605, Sacramento, California 95825.

The Corps recognizes the importance of this statewide project and in working collaboratively with the FRA on the Final Program EIR/EIS. If you have any questions relating to Section 404 of the Clean Water Act or our regulatory program in general, please feel free to contact Ms. Susan A. Meyer at (213) 452-3412 of my staff. Please refer to this letter and 200100857-SAM in your reply.

Sincerely,

Alex C. Dornstauder
Colonel, US Army
District Engineer

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

April 30, 2008

David Valenstein, Environmental Program Manager
Federal Railroad Administration
1120 Vermont Avenue, NW, MS 20
Washington, D.C. 20590

Subject: EPA Concurrence on the Corridor Most Likely to Contain the Least Environmentally Damaging Practicable Alternative for the Bay Area to Central Valley Draft Programmatic Environmental Impact Statement

Dear Mr. Valenstein:

The U.S. Environmental Protection Agency (EPA) is writing in response to your request of March 6, 2008 for concurrence on the corridor most likely to contain the least environmentally damaging preferred alternative (LEDPA) for the proposed **Bay Area to Central Valley California High Speed Train System**. We appreciate receiving follow-up materials provided to us via meeting on March 18, 2008. As outlined in the Cooperating Agency Memorandum of Understanding (MOU), EPA's concurrence on the corridor most likely to contain the LEDPA is intended to integrate the requirements of the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act early in the environmental review process. EPA appreciates the coordination with your agency on this project and looks forward to continued participation in this, and future project-level, environmental reviews.

PURPOSE AND NEED

On January 27, 2007, EPA concurred with the following purpose and need statement for the Bay Area to Central Valley High Speed Train project:

> *"The purpose of the Bay Area High Speed Train is to provide a reliable high-speed electrified train system that links the major Bay Area cities to the Central Valley, Sacramento, and Southern California, and that delivers predictable and consistent travel times. Further objectives are to provide interfaces between the HST system and major commercial airports, mass transit and the highway network, and to relieve capacity constraints of the existing transportation system in a manner sensitive to and protective of the Bay Area to Central Valley region's and California's unique natural resources".*

RANGE OF ALTERNATIVES

Through the January 27, 2007 letter, EPA also concurred with the range of System Alternatives to be advanced to the Tier 1 Draft EIS. These alternatives include No Build/No

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Action, Modal, and High Speed Train. EPA also concurred with all of the High Speed Train alignment and station alternatives to be advanced to the Tier 1 Draft EIS at that time.

MOST LIKELY CORRIDOR TO YEILD THE LEDPA

Through this letter, and based on our review of the information provide to EPA as of this date, EPA concurs that the corridor most likely to yield the LEDPA is the "Pacheco Pass, San Francisco and San Jose Termini".

Thank you for this opportunity to participate in the Bay Area to Central Valley High Speed Train planning process. As a cooperating agency, we continue to be available to review administrative drafts and technical reports related to air quality, aquatic resources, and cumulative impacts analysis.

We look forward to reviewing and commenting on the proposed conceptual mitigation plan and completed Tier 1 Final EIS, pursuant to our NEPA/Clean Air Act Section 309 authority. If you have any questions, please feel free to contact me at 415-972-3846, or Connell Dunning, the lead reviewer for this project. Connell can be reached at 415-947-4161 or dunning.connell@epa.gov.

Sincerely,

Connell Dunning

for Nova Blazej, Manager
Environmental Review Office

cc: Dan Leavitt, California High Speed Rail Authority
Bob Smith, Army Corps of Engineers

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DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

Regulatory Division

MAY 0 8 2008

Mr. David Valenstein
Federal Railroad Administration
Mail Stop 20
1120 Vermont Avenue, N.W.
Washington, DC 20590

Dear Mr. Valenstein:

This letter is written in response to request for concurrence on the Bay Area to Central Valley High Speed Train (HST) Section 404 (b)(1) Alternatives Analysis for the HST route selection. Based on our review of the information in the documents you provided we believe you have reasonably demonstrated that there are no other routes to accommodate the Bay Area to Central Valley High Speed Train. Based on this evaluation, the Corps concludes there are no other practicable alternatives to the Pacheco Pass, San Francisco and San Jose Termini with less adverse impact on the aquatic ecosystem or without other significant adverse environmental consequences.

Should you have any questions regarding this matter, please call Bob Smith of our Regulatory Branch at 415-503-6792. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter.

Sincerely,

Jane M. Hicks
Chief, Regulatory Division

Copy Furnished:

US EPA, San Francisco, CA