



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

August 31, 2018

Melanie Brent, Caltrans District 4  
111 Grand Ave.  
Oakland, CA 94612

Subject: Early Coordination for the Highway 37 Project Between U.S. 101 and Interstate 80, Marin, Napa, Sonoma, and Solano Counties, California

Dear Ms. Brent,

The U.S. Environmental Protection Agency (EPA) appreciates the opportunity to provide early coordination recommendations to Caltrans per your role as the National Environmental Protection Act (NEPA) lead agency and decisionmaker for future improvements to Highway 37. We understand that Caltrans participates in Environmental Working Group coordination meetings with local transportation, planning, and environmental agencies and organizations to plan for future improvements along the State Route 37 corridor. The purpose of this letter is to provide Caltrans with early feedback to assist in the design and analysis of future alternatives for meeting the transportation needs of the region, while providing for the continued environmental health of the SR 37 corridor. We note that this information is critical for future decisions and analysis pursuant to NEPA.

Over the last few decades, over \$100 million has been invested in restoring the tidal baylands that SR 37 traverses. Baylands restoration projects in this region have been implemented to reconnect natural systems that improve water quality and habitat for a multitude of species, including Ridgway's rail and the salt marsh harvest mouse. These project have also been built to plan for rising sea levels and variable hydrology. The Baylands Goals Report (1999) set the 100,000 acres tidal wetlands goal for the Bay Area, as a whole, and identified the North Bay as an area where large scale restoration should occur and extend into the watersheds of the region's major tributaries.<sup>1</sup>

*Integrated NEPA/404 MOU*

The SR 37 project will be a candidate for the Caltrans, EPA, Army Corps of Engineers (Corps), U.S. Fish and Wildlife Service, and the National Marine Fisheries Service joint Memorandum of Understanding (MOU) to merge NEPA and CWA Section 404 permitting processes for surface transportation projects that have five or more acres of permanent impacts to Waters of the United States and that require a NEPA Environmental Impact Statement (EIS). The MOU ([http://www.dot.ca.gov/ser/downloads/MOUs/NEPA404/nepa404\\_2006\\_final\\_mou.pdf](http://www.dot.ca.gov/ser/downloads/MOUs/NEPA404/nepa404_2006_final_mou.pdf)) provides a framework for early coordination, including checkpoints, dispute resolution, tiering, and planning that can help refine the SR 37 project moving forward. The MOU is regularly followed using synchronized California Environmental Quality Act/NEPA processes that result in one combined EIR/EIS. We note that while the MOU includes signatories from only federal agencies, it has been used successfully for other

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<sup>1</sup> Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. First Reprint. U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, Oakland, CA

highway projects in California as a framework for coordinating equally among all regional, state, and federal resource and regulatory agencies that have permitting and authorization roles in highway projects. Key milestones include Purpose and Need, Alternatives to be analyzed in the NEPA document, and the Least Environmentally Damaging Practicable Alternative (LEDPA), further described below.

#### *Clean Water Act Section 404*

EPA highlights the following permitting requirements for potential impacts to waters and wetlands from future projects along SR 37. These can be added to the draft “Environmental Criteria for Evaluation of SR 37 Alternatives,” dated June 11, 2018, that was shared with the Environmental Working Group. EPA recommends that the following criteria be incorporated into the decisionmaking process as soon as possible, in advance of the initiation of NEPA and CWA Section 404 processes, to avoid the need to revisit decisions in the future. EPA and the US Army Corps of Engineers (Corps) have jurisdictional authority over CWA Section 404 permitting. Any project that proposes to place fill or dredged material into Waters of the United States will require a CWA Section 404 permit from the Corps. As part of that process, Caltrans will submit a CWA Section 404 application, 404(b)(1) Alternatives Analysis, and information to support a determination of the appropriate NEPA process before a permit decision could be made.

EPA encourages Caltrans to integrate CWA Section 404 regulatory requirements into the NEPA process for both regulatory and planning programs to streamline environmental review by using NEPA documents for multiple permitting processes. Alternatives Analysis for a CWA Section 404 permit action must comply with EPA’s 404(b)(1) Guidelines, including detailed evaluation of all practicable and reasonable alternatives that would fulfill the project’s purpose and need, including alternatives outside the legal jurisdiction of the Corps (40 CFR Section 1502.14(c)). An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes. The CWA Section 404(b)(1) analysis must provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail, and clearly demonstrate that the preferred alternative for a proposed action is the LEDPA that achieves the overall project purpose.

The LEDPA is the alternative with the fewest direct, secondary, and cumulative impacts to aquatic resources, so long as it does not have other significant adverse environmental consequences (40 CFR Section 230.10(a)). To identify the LEDPA, the environmental impacts, beneficial and adverse, of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g. acres of wetlands impacted; change to water quality).

To assure that the SR 37 Project complies with the CWA Section 404(b)1 Guidelines, EPA recommends that early planning occurring now also consider what future NEPA and permitting documentation will need to include: 1) Provide sufficient information regarding appropriate hydrologic, geomorphic, and ecological habitat design considerations to make a reasonable judgment discerning the LEDPA, and 2) Demonstrate that the preferred project alternative would minimize potential adverse impacts to sensitive aquatic ecosystems to the maximum extent practicable. Due to the project’s proximity to the baylands, including a diversity of creeks, marshes, and wetlands, EPA strongly encourages considering alternatives that maximize opportunities to incorporate appropriate floodplain design; incorporate sea level rise models that further long-term resiliency of the project; facilitate connectivity between inner, non-tidal aquatic habitats and tidal margins; incorporate stormwater treatment planning into the project

design; consider sediment transport processes; and provide adequate transitional zone to accommodate wildlife species in and around the project area.

EPA understands that environmental and economic concerns must be integrated and balanced for the multitude of SR 37 regional users and communities; therefore, EPA continues to support Caltrans in a strong stakeholder and community coalition engagement process to refine the LEDPA analysis. We also highly recommend that Caltrans host early coordination meetings at key milestones for the project with goal of participation by all permitting/authorization entities including the Corps, EPA, USFWS, NMFS, Bay Conservation and Development Commission (BCDC), California Department of Fish and Wildlife, and the Regional Water Quality Control Board. Early regulatory coordination on anticipated authorization and permitting issues can improve the documentation of the alternatives analysis and prepare the agencies for future permitting and design decisions, including future NEPA analysis.

#### *SR 37 Corridor*

Preliminary discussions with the Environmental Working Group for the SR 37 project have focused attention on Segment B of SR 37, between Sears Point at SR 121 and the eastern edge of the San Pablo Bay National Wildlife Refuge. We recommend that Caltrans, as the lead federal agency for NEPA, consider the entirety of the SR 37 corridor, from US 101 to SR 29/Interstate 80, when analyzing regional and local solutions for the SR 37 corridor. Focusing on a solution for only Segment B of SR37 may preclude the consideration of alternatives for transportation solutions in the project area as it will dictate the beginning and endpoint of a future roadway design immediately to the east and west of Segment B. A programmatic analysis assessing broad regional alternatives and ultimately defining a corridor to focus on would help in assessing the benefits and adverse impacts of regional solutions.

We look forward to continued discussions as alternatives are refined for the entire proposed SR 37 project and encourage Caltrans to formalize the involvement of resource and regulatory agencies so that input developed early in the process may be incorporated into future NEPA documentation. We note that there are other "Planning and Environmental Linkages" projects that can serve as a model for the use of pre-NEPA analyses and conclusions to inform future NEPA analysis and properly document planning materials so that they can be later included by reference in NEPA documents. Holding a formal kick-off meeting including regulatory and resource agencies would help accomplish the goal of documenting consultation and agency involvement. Please contact EPA if you have any questions about any of the early coordination comments provided in this letter. Carolyn Mulvihill, the lead NEPA reviewer for SR 37 can be reached at 415-947-3554 or [mulvihill.carolyn@epa.gov](mailto:mulvihill.carolyn@epa.gov). Jennifer Siu, the lead EPA reviewer for CWA Section 404 permitting, can be reached at 415-972-3983 or [siu.jennifer@epa.gov](mailto:siu.jennifer@epa.gov).

Sincerely,



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cc: Richard Bottoms, U.S. Army Corps of Engineers  
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