

# **Appendix H**

Agency Letters



APPENDIX H  
Agency Letters

Date	To	From	Subject
June 9, 2003	Mr. Leslie T. Rogers, Federal Transit Administration	Dr. Knox Mellon, Office of Historic Preservation	Concurrence on eligibility or architectural properties
July 9, 2003	Mr. Leslie T. Rogers, Federal Transit Administration	Dr. Knox Mellon, Office of Historic Preservation	Supplemental comments on NRHP eligibility of seven architectural properties
September 20, 2005	Mr. Thomas Fitzwater, AICP, Valley Transportation Authority	Mr. Milford Wayne Donaldson, Office of Historic Preservation	Concurrence that APE has been adequately defined
August 16, 2007	Mr. John Donahue, Valley Transportation Authority	George Fowler, P.E., Capital Program Services Division	Flood Protection Project Needs along Upper Penitencia Creek and Coyote Creek in the vicinity of the Proposed SVRT Alignment
October 1, 2007	Mr. John Donahue, Valley Transportation Authority	Manuel Pineda, San Jose Department of Transportation	Riparian Corridor Setback for Upper Penitencia Creek and Coyote Creek
October 1, 2007	Tom Fitzwater	Chris Nagano, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service	Environmental Review Process for the Silicon Valley Rapid Transit Project in Santa Clara County, California
November 20, 2007	Mr. Milford Wayne Donaldson, Office of Historic Preservation	Thomas Fitzwater, Valley Transportation Authority	Silicon Valley Rapid Transit Corridor Project
June 25, 2008	Mr. Milford Wayne Donaldson, Office of Historic Preservation	Thomas Fitzwater, Valley Transportation Authority	Silicon Valley Rapid Transit Corridor Project – FTA040219A

## APPENDIX H Agency Letters

October 9, 2008			California Department of Fish and Game, Natural Diversity Database, Selected Elements by Scientific Name – Landscape
October 9, 2008			California Department of Fish and Game, Natural Diversity Database, Selected Elements by Common Name – Landscape
October 21, 2008	Mr. Wes Toy, Santa Clara Valley Transit Authority	Bruce H. Wolfe, California Regional Water Quality Control Board	Approval of the Contaminant Management Plan for the Bay Area Rapid Transit (BART) Extension Project to Milpitas, San Jose, and Santa Clara, Santa Clara County
November 10, 2008	Ms. Ann Calnan, Santa Clara Valley Transportation Authority	United States Department of the Interior, fish and Wildlife Service	Species List for Silicon Valley Rapid Transit Corridor (study area)

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896  
SACRAMENTO, CA 94296-0001  
(916) 653-6624 Fax: (916) 653-9824  
calshpo@mail2.quiknet.com



June 9, 2003

REPLY TO: FTA030325A

Leslie T, Rogers, Regional Administrator  
Federal Transit Administration, Region IX  
201 Mission Street, Suite 2210  
SAN FRANCISCO CA 94105-1839

Re: Silicon Valley Rapid Transit Corridor Project, San Jose, Santa Clara County.

Dear Mr. Rogers:

Thank you for submitting to our office your March 19, 2003 letter, Historic Resources Evaluation Report (HRER), and Archeological Survey and Sensitivity Report (ASSR) regarding the proposed Silicon Valley Rapid Transit Corridor Project (SVRTC) in the City of San Jose, Santa Clara County. The SVRTC would enhance regional connectivity through expanded, interconnected rapid transit services between Bay Area Rapid Transit (BART) in Fremont and light rail and Caltrain in Silicon Valley. The project would improve public transit services by providing increased transit capacity, more convenient access to services, and the alleviation of severe and ever-increasing traffic congestion on the Interstate 880 (I-880), and I-680 freeways between Alameda and the Silicon Valley.

The SVRTC includes two "build" alternatives that would meet the project purpose and need. The "build" alternatives include:

- The "New Starts" Baseline Alternative, which would build upon existing, planned, and programmed transportation improvements in the corridor with additional express bus service and other associated improvements.
- The BART Extension Alternative, which would extend the BART system approximately 16.3 miles from the planned Warm Springs BART Station in Fremont, south along the Union Pacific Railroad (UPRR) to Santa Clara Street in San Jose, then west in a subway under public and private property through east and downtown San Jose, to terminate at grade near the Santa Clara Caltrain Station. This alternative would include seven stations plus one optional station along the alignment.

The architectural and archeological Areas of Potential Effects (APEs) for these project alternatives extend from Fremont southward through the City of Milpitas to eastern San Jose, where it turns west running through San Jose and then northwest into the City of Santa Clara. The APEs also encompass an area at the north end of the project between I-680 and I-880, as well as a discontinuous area at the I-880/Montague Expressway interchange. The APEs include the Union Pacific Railroad (UPRR) right-of-way from Fremont to San Jose to encompass BART extension alignment tracks. Much of this portion will contain areas to allow for BART operational

stations and substations, parking areas, and turn-around tracks. For the archeological APE, where the alignment is a subway, parcels surrounding facilities that connect from the surface to the 40-50 foot deep tunnel are included; and the bored tunnel is not. For the architectural APE a buffer zone immediately adjacent to surface construction and the legal parcels immediately above the work for tunneled portions of the project are included. The project APEs, with one exception, appear adequate and meet the definitions set forth in 36 CFR 800.16(d). I recommend that the FTA either revise the archeological APE for the BART Extension Alternative to include the bored, 40-50 foot deep tunnel, or make explicit the agency's rationale for excluding the tunnel from that APE.

FTA is seeking my comments on its determination of the eligibility of 250 pre-1962 architectural buildings and structures within the architectural APE for inclusion on the National Register of Historic Places (NRHP) in accordance with 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act. A review of the HRER leads me to make the following comments regarding these properties:

- The twenty (20) architectural properties noted in the HRER as listed on the NRHP or previously determined, by consensus, to be eligible for inclusion on the NRHP are still eligible properties under applicable criteria established by 36 CFR 60.4.
- I concur that the following architectural properties are eligible for inclusion on the NRHP under applicable criteria established by 36 CFR 60.4:
  1. Five Wounds Church, 1375 East Santa Clara Street, San Jose, Criteria A and C.
  2. Mayfair Theater, 1191 East Santa Clara Street, San Jose, Criterion C.
  3. Residence at 1169 East Santa Clara Street, San Jose, Criterion C
  4. Fox Building, 40 N. 4<sup>th</sup> Street, San Jose, Criterion C.
  5. San Jose Building and Loan, 81 West Santa Clara Street, San Jose, Criterion C.
  6. James Clayton Building, 34 West Santa Clara Street, San Jose, Criteria A and C.
  7. Structure at 51 N. San Pedro Street (Spaghetti Factory), San Jose, Criterion A.
  8. Calpak/Del Monte Plant #51, 50 Bush Street, San Jose, Criterion A and C.
  9. 848 The Alameda, San Jose, Criterion C
  10. Residence at 176 North Morrison Avenue, San Jose, Criterion C
  11. Muirson Label and Crate Company building, 421-435 Stockton Avenue, San Jose, Criterion A and C.

The Five Wounds Church building and its attached Rectory have strong associations with the cultural and social history of San Jose's Portuguese community. The church building is probably the only religious structure in the Bay Area that fully exhibits the elements of the Portuguese Baroque Revival architectural style. The remaining structures eligible under Criterion A have strong associations with the development of significant commercial enterprises in the San Jose area that involved food processing, banking, and agriculture-associated manufacturing. These structures eligible under Criterion C appear to have retained sufficient integrity of design, materials, and workmanship to convey both their architectural style and historic period of significance.

A number of other structures were deemed eligible in the HRER under Criterion A. However, I felt the HRER did not provide compelling evidence of any of these structures' associations with significant historical events. The historical themes cited for their significance under Criterion A were not sufficiently developed to justify these properties inclusion on the NRHP. As a result these structures are included with the remaining pre-1962 structures cited in the HRER that are not eligible for inclusion on the NRHP under any of the criteria established by 36 CFR 60.4. The structures have no strong associations with significant historical events or persons and are not examples of outstanding architectural or engineering design or function.

FTA is also seeking my concurrence on the adequacy of the archeological inventory and the ASSR, and is requesting that I endorse the agency's proposed strategy for the further identification and management of archeological properties. The inventory of archeological in the ASSR would be adequate as the first part of a phased process of identification and evaluation under 36 CFR 800.4(b)(2) if FTA were to propose such a process. I would reconsider FTA's strategy for the further identification and management of archeological properties to present potential subsequent phases of that process, and I would want to consult with FTA on those subsequent phases.

Thank you again for seeking my comments on your project. If you have any question, please contact staff historian Clarence Caesar by phone at (916) 653-8902, or by e-mail at [ccaes@ohp.parks.ca.gov](mailto:ccaes@ohp.parks.ca.gov).

Sincerely,



Dr. Knox Mellon  
State Historic Preservation Officer

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896  
SACRAMENTO, CA 94296-0001  
(916) 653-6624 Fax (916) 653-9824  
caishpo@mail2.quiknet.com



July 9, 2003

REPLY TO: FTA030325A

Leslie T, Rogers, Regional Administrator  
Federal Transit Administration, Region IX  
201 Mission Street, Suite 2210  
SAN FRANCISCO CA 94105-1839

Re: Silicon Valley Rapid Transit Corridor Project, San Jose, Santa Clara County.

Dear Mr. Rogers:

It has been brought to my attention by Meta Bunse of JRP Historical Consulting (JRP) that further clarification is needed regarding my concurrence on the National Register of Historic Places (NRHP) eligibility of seven architectural properties located within the Area of Potential Effects (APE) of the Silicon Valley Rapid Transit Project in the City of San Jose in Santa Clara County. In my letter of June 9, 2003 I provided comments on the NRHP eligibility of architectural properties evaluated in Volumes I and II of the Historic Resources Evaluation Report (HRER) (JRP, January 2003) provided for my review by the Federal Transit Administration (FTA). My letter apparently neglected to include comments on the NRHP eligibility of seven architectural properties noted in the HRER. Due to this oversight, I am providing FTA with the following supplemental comments regarding the aforementioned properties:

- 884 E. Santa Clara Street - This property is not eligible for inclusion on the NRHP under any of the criteria established by 36 CFR 60.4. The structure has no strong associations with significant historical events or persons, and is an interesting, but not outstanding, example of its architectural type (Romanesque/Baroque).
- 17-25 E. Santa Clara Street - This property is not eligible for inclusion on the NRHP under any of the criteria established by 36 CFR 60.4. The structure has undergone numerous changes to its exterior and interior and does not retain sufficient integrity of design, materials, and workmanship to individually qualify for inclusion on the NRHP.
- 127-145 Post Street and 33-45 S. Market Street - These properties are not individually or collectively eligible for inclusion on the NRHP under any of the criteria established by 36 CFR 60.4. These structures have associations with the development of the early commercial development in the downtown San Jose area, but are not distinguished representatives of any particular architectural type. Both structures have also undergone numerous changes to their exteriors and interiors and do not retain sufficient integrity to convey their associations with their historic periods of significance.



- 101 W. Santa Clara Street - This building is eligible for inclusion on the NRHP under Criterion C as defined in 36 CFR 60.4. The building is a good example of the late Art Deco architectural style and has retained its integrity of design, materials, workmanship, feeling and association with its historic period of significance (1942 to 1953).
- 151 W. Santa Clara Street - Given the number of uses this building has served during its existence, it is unclear from the documentation how extensive any alterations to the structure may have been. Until this issue is clarified by additional documentation, I recommend that, for purposes of this project, the structure retain its status of appearing eligible for inclusion on the NRHP.
- 161-167 W. Santa Clara - In our letter of June 4, 1996 (HUD960122C), this property was determined, by consensus, to be ineligible for inclusion on the NRHP. A review of the HRER provides no evidence that compels me to reverse my original consensus finding on this property's NRHP eligibility.
- Santa Clara Tower, Benton Street and Railroad Avenue - As noted in my letter of December 9, 2002 (FTA021021A), I concurred with FTA's determination that this property was eligible for inclusion on the NRHP under Criterion C as defined by 36 CFR 60.4. I stand by my finding of NRHP eligibility for this structure.

Thank you again for providing me the opportunity to clarify my comments on the above properties. If you have any questions, please contact staff historian Clarence Caesar by phone at (916) 653-8902, or by e-mail at [ccaes@ohp.parks.ca.gov](mailto:ccaes@ohp.parks.ca.gov).

Sincerely,



Dr. Knox Mellon  
State Historic Preservation Officer

Cc: Meta Bunse, JRP Historical Consulting

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896  
SACRAMENTO, CA 94296-0001  
(916) 653-8824 Fax: (916) 653-9824  
calshpo@ohp.parks.ca.gov  
www.ohp.parks.ca.gov

VTA  
ENV. ANALYSIS



2005 OCT 11 P 3:35

September 20, 2005

REPLY TO: FTA040217A

Thomas Fitzwater, AICP  
Environmental Planning Manager  
Santa Clara Valley Transportation Authority  
3331 North First Street  
San Jose, CA 95134-1906

RE: Silicon Valley Rapid Transit Corridor Project, City of San Jose, Santa Clara County

Dear Mr. Fitzwater,

This letter is in response to your July 12, 2005 letter and supporting documentation continuing our consultation on the above-referenced undertaking. You are consulting with me on behalf of the Federal Transit Administration (FTA) in accordance with 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act.

The information you have provided explains the proposed subway tunnel is 20 feet in diameter, thus the bottom of the tunnel would generally be 60 feet below ground level. Furthermore, localized areas with a reduced depth of cover will occur as the alignment transitions from bored tunnels into cut-and-cover and at-grade structures and passes beneath localized topographic features. The submittal includes a series of 19 sheets depicting the APE on aerial photographs. I am now able to concur that the APE for this undertaking has been adequately defined.

Your submittal explains you are having a Finding of Effect (FOE) document prepared that will discuss the undertaking's effects to built environment properties. I look forward to reviewing this document. Your letter also explains you expect the project to have an adverse effect to archaeological properties, but would like to proceed in a phased approach to assess effects. You have provided me with a draft Memorandum of Agreement and asked for my review. I prefer to suspend comment on the MOA pending review of the FOE to ensure we are in agreement on which properties need to be addressed in the agreement document.

If you have any questions, please contact staff historical archaeologist Anmarie Medin at (916) 651-0304 or [amedin@parks.ca.gov](mailto:amedin@parks.ca.gov).

Sincerely,

Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer



5750 ALMADEN EXPWY  
SAN JOSE, CA 95118-3686  
TELEPHONE (408) 265-2600  
FACSIMILE (408) 266-0271  
www.valleywater.org  
AN EQUAL OPPORTUNITY EMPLOYER

August 16, 2007

RECEIVED

AUG 20 2007

SVRT PDCC

CC: DENNIS RATCLIFFE  
DAREN GEE  
MARK ROBINSON  
HASSAN BASMA  
TOM FITZWATER  
JOHN DONAHUE

Mr. John Donahue  
Engineering Group Manager, Northern Area  
Valley Transportation Authority  
3331 North First Street, Building A  
San Jose, CA 95134

Subject: Flood Protection Project Needs along Upper Penitencia Creek and Coyote Creek in the Vicinity of the Proposed SVRT Alignment

Dear Mr. Donahue:

As a follow-up to previous discussions with VTA and City of San Jose (City) staffs, this letter summarizes the Santa Clara Valley Water District's (District) anticipated requirements for planned flood protection projects along portions of the subject creeks.

**Upper Penitencia Creek:**

Along Upper Penitencia Creek, from the Coyote Creek confluence to Dorel Drive, the District is partnering with the U.S. Army Corps of Engineers (Corps) to prepare a feasibility study and an environmental impact report/statement for future flood protection improvements. The Corps expects to complete these planning documents by late-2008. Currently, a preferred project alternative has not been selected; however, District staff, in cooperation with a number of stakeholders, has identified a staff-preferred alternative likely to be adopted at the time the study is completed.

Between Coyote Creek and approximately 400 feet easterly of the railroad crossing (where the creek turns 90-degrees), the staff-preferred alternative would require a minimum creek width of 205 feet starting from the northerly top of bank, adjacent to the existing Berryessa Road alignment, and extend southerly into the adjacent private properties. This setback area would provide enough space to create a more natural floodplain by excavating a bench for flood protection and incorporating a joint maintenance road/recreational trail. Attached is a typical cross-section which illustrates this preliminary alternative.

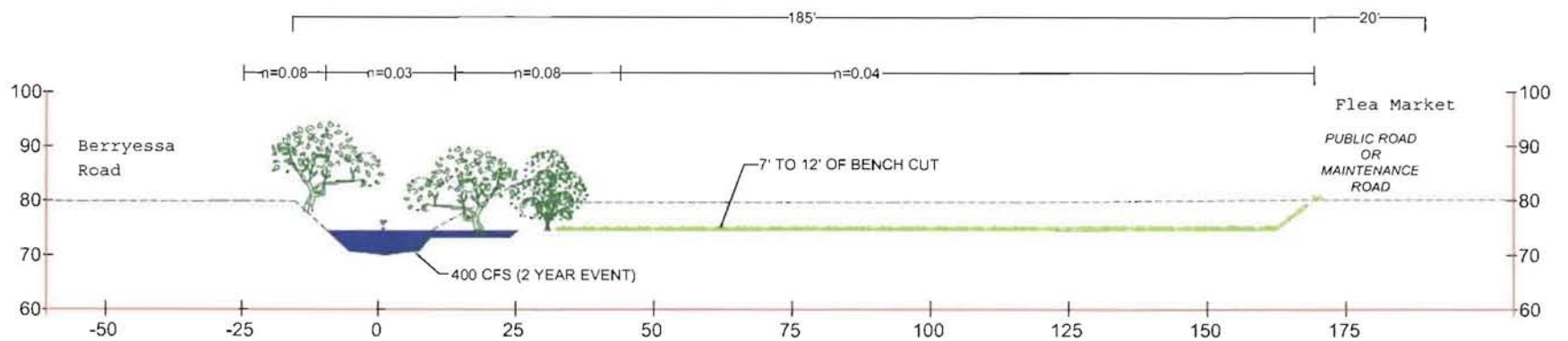
**Coyote Creek:**

Along Coyote Creek, between Montague Expressway and Interstate 280, the District is preparing an engineer's report and environmental impact report for future flood protection improvements. The District is currently evaluating project alternatives and has not yet selected a preferred alternative. However, conceptual alternatives to widen the creek have been developed in the area between Berryessa Road and just southerly of Mabury Road. These conceptual alternatives utilize a 100-foot setback along the east bank, starting from the easterly tree dripline and extend east into the private properties for the future flood protection improvements. This setback would be the minimum right-of-way required for flood protection and provides an opportunity to excavate a bench to convey high flood flows while incorporating a joint-use maintenance road and recreational trail along the creek in the future. It is recognized that less than the 100-foot setback may be available adjacent to the Mabury Road bridge due to

B0708B080



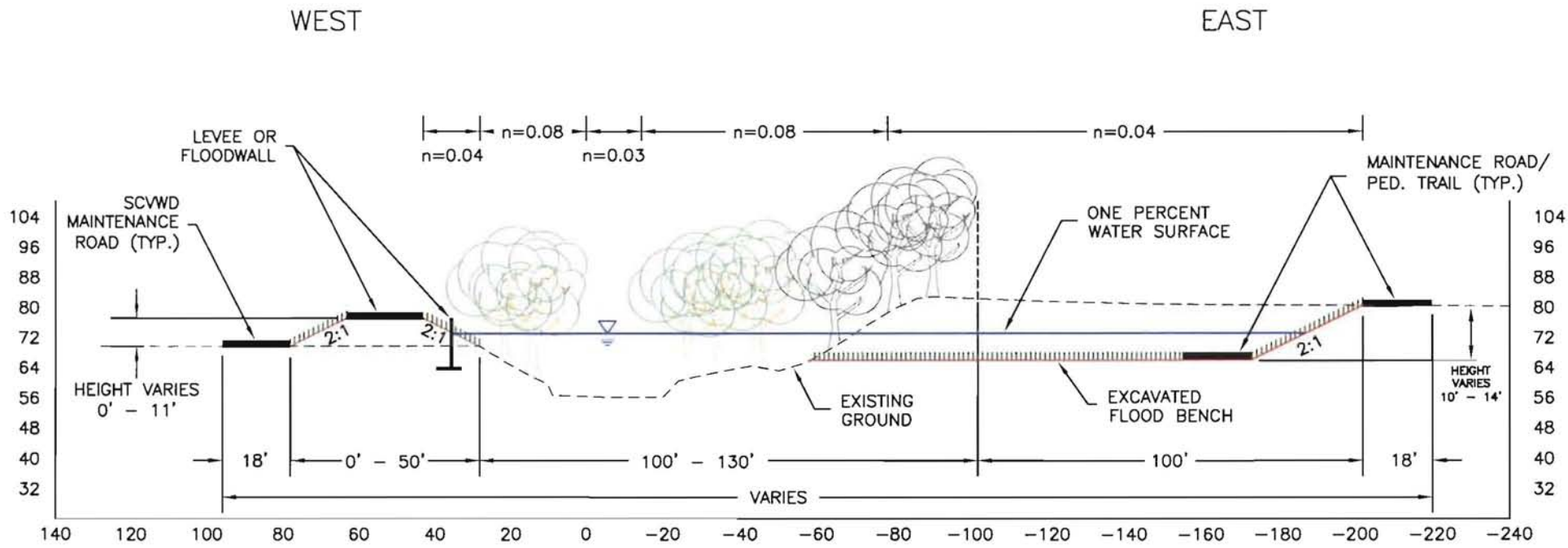
**UPPER PENITENCIA CREEK - REACH 1 (FLEA MARKET PROPERTY)**  
 TYPICAL CROSS SECTION (LOOKING UPSTREAM)



NOT TO SCALE


NOTES:

- 1) CREEK INVERT ELEVATION AT 60' NEAR COYOTE CREEK.
- 2) THE LOW FLOW CHANNEL WILL BE SLIGHTLY WIDENED AND HAVE A 400 CFS CAPACITY (2-YEAR EVENT).
- 3) THE FOLLOWING "N" VALUES WILL APPLY:
  - \*  $n = 0.08$  - RIPARIAN HABITAT, DENSE GROWTH WITH SOME MAINTENANCE.
  - \*  $n = 0.04$  - SMALL SHUBS AND GRASSY AREAS, MAINTENANCE REQUIRED.
  - \*  $n = 0.03$  - LOW FLOW CHANNEL.
- 4) 12' BENCH CUT NEAR COYOTE CREEK.
- 5) 205' TYPICAL WIDTH FROM COYOTE CREEK TO KING ROAD.



**COYOTE CREEK (ADJACENT TO FLEA MARKET)**  
**TYPICAL CROSS SECTION (LOOKING DOWNSTREAM)**

**DRAFT**

Santa Clara Valley Water District 	
<b>MID-COYOTE PROJECT</b> MONTAGUE EXPWY. TO I-280 TYPICAL CROSS SECTION	
SCALE: NTS	REVISED: 5/31/06

the City's existing corporation yard access road intersection. Attached is a preliminary typical cross-section which illustrates this conceptual alternative.

The District currently has limited land ownership or easements along the private properties that are adjacent to Upper Penitencia and Coyote Creeks in this area. We are looking to the City to assist the District in reserving the necessary right-of-way for future flood protection improvements through enforcement of the City's Riparian Corridor Policy when approving future development plans in these areas.

If you have any questions regarding the District's flood protection projects or the information provided, please contact me at (408) 265-2607 ext. 2748.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Fowler", with a long horizontal flourish extending to the right.

George Fowler, P.E.  
Senior Project Manager  
Capital Program Services Division

#### Attachments

cc: M. Klemencic  
K. Oven  
S. Tippets  
T. Hipol  
Z. Shao  
K. Sibley  
S. Katric  
S. Bui  
G. Fowler

VTA – Daren Gee

City of San Jose – Henry Servin, Manuel Pineda, Mirabel Aguilar

U.S. Army Corps of Engineers – Jim Miller



RECEIVED  
OCT 29 2007  
SVRT PDCC

*Department of Transportation*

JAMES R. HELMER - DIRECTOR

October 1, 2007

Mr. John Donahue  
Northern Area Group Manager  
VTA  
3103 North First Street  
San Jose CA 95134

SUBJECT: RIPARIAN CORRIDOR SETBACK FOR UPPER PENITENCIA CREEK AND  
COYOTE CREEK

Dear Mr. Donahue,

This letter is to verify that the City Council on August 14, 2007 has approved a Planned Development Zoning for the San Jose Flea Market mixed-use development project which requires a 100' riparian corridor setback for Upper Penitencia Creek and a setback of 100' from the outside edge of the riparian habitat for Coyote Creek, with the exception of a reduced setback from Coyote Creek adjacent to Mabury Road, as described further below.

The City's Riparian Corridor Policy provides for exceptions to the 100' setbacks as long as basic riparian habitat protection objectives are achieved; these exceptions include geometric characteristics of lots and roads. Conditions warranting an exception exist at Coyote Creek north of Mabury Road as described in the Flea Market Amendment and Planned Development Rezoning Environmental Impact Report. Accordingly, the City Council on August 14, 2007 approved a reduced Coyote Creek riparian setback north of Mabury Road to allow proper alignment of the planned new road serving the Flea Market property with the existing driveway on the south side of Mabury Road. These setbacks are supportive of the future SCVWD flood control projects along Upper Penitencia Creek and along Coyote Creek, as described in the attached letter from the SCVWD dated August 16, 2007.

If you have any questions or require additional information please call me at (408) 975-3295.

Sincerely,

Manuel Pineda  
Division Manager

Attachments: Flood Protection Project Needs along Upper Penitencia Creek and Coyote Creek in the Vicinity of the Proposed SVRT Alignment dated August 16, 2007

cc: Akoni Danielsen, PBCE  
Michael Liw, Public Works  
Henry Servin, DOT  
Daren Gee, VTA

B0710B113

**From:** Chris\_Nagano@fws.gov [mailto:Chris\_Nagano@fws.gov]

**Sent:** Monday, October 01, 2007 5:39 PM

**To:** Fitzwater, Tom

**Cc:** djohnston@dfg.ca.gov; Ryan\_Olah@fws.gov; Boyd, Darryl; Eric\_Tattersall@fws.gov; Jonathan.Ambrose@noaa.gov; Mike\_Thomas@fws.gov; Jared.Hart@sanjoseca.gov; Cori\_Mustin@fws.gov; ldavis@dfg.ca.gov; Brian Wines

**Subject:** Environmental Review Process for the Silicon Valley Rapid Transit Project in Santa Clara County, California

Dear Mr. Fitzwater:

This electronic mail message is in response to the environmental review process for the Silicon Valley Rapid Transit Project. At issue are the potential adverse effects of the proposed project on the threatened California red-legged frog (*Rana aurora draytonii*), threatened bay checkerspot butterfly (*Euphydryas editha bayensis*), threatened California red-legged frog (*Rana aurora draytonii*), threatened California tiger salamander (*Ambystoma californiense*), endangered least Bell's vireo (*Vireo bellii pusillus*), endangered Contra Costa goldfields (*Lasthenia conjugens*), endangered vernal pool tadpole shrimp (*Lepidurus packardii*), endangered California least tern (*Sterna antillarum browni*), endangered California clapper rail (*Rallus longirostris obsoletus*), endangered salt marsh harvest mouse (*Reithrodontomys raviventris*), endangered Santa Clara Valley dudleya (*Dudleya setchellii*), endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*) and other listed species under the authority of the U.S. Fish and Wildlife Service (Service). We also are concerned about the potential effects of the project on the American badger (*Taxidea taxus*) and the burrowing owl (*Spetylo canicularia*). This review is based on the information dated September 27, 2007, that was provided to the Service by the Santa Clara Valley Transportation Agency. The information was received by this Field Office on October 1, 2007. Based on the information provided by the County of Santa Clara and otherwise available to us, the proposed project is located in an area of Santa Clara County that may provide suitable habitat for the California red-legged frog, bay checkerspot butterfly, California tiger salamander, least Bell's vireo, vernal pool tadpole shrimp, California least tern, California clapper rail, salt marsh harvest mouse, Contra Costa goldfield, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, other listed species, American badger, and the burrowing owl, or is otherwise naturally accessible to them.

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only is the California red-legged frog, bay checkerspot butterfly, California tiger salamander, vernal pool tadpole shrimp, California least tern, California clapper rail, salt marsh harvest mouse, and least Bell's vireo protected from such activities as collecting and hunting, but also from actions that result in their death or injury due to the damage or destruction of their



habitat. The Act prohibits activities that "...remove and reduce to possession any listed plant from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law." The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

As part of the environmental review for this proposed project, the Service recommends that habitat evaluations and/or survey, as appropriate, by qualified biologists following Service and California Department of Fish and Game protocols be completed for the California red-legged frog, bay checkerspot butterfly, California tiger salamander, least Bell's vireo, vernal pool tadpole shrimp, California least tern, California clapper rail, salt marsh harvest mouse, Contra Costa goldfield, Santa Clara Valley dudleya, and the Metcalf Canyon jewelflower in the action area. We recommend the County of Santa Clara provide us and the California Department of Fish and Game with the results of these assessments and/or survey. If it is determined that the proposed project may result in take or adverse effects to the these species, and/or other federally listed species under the authority of the Service, including indirect and/or cumulative effects, we recommend that the Santa Clara Valley Transportation Agency obtain authorization for incidental take for the appropriate listed animal species pursuant to sections 7 or 10(a)(1)(B) of the Act prior to certification of the final environmental documents.

We recommend adequate habitat assessments/surveys, as appropriate, for the badger, burrowing owl, loggerhead shrike (*Lanius ludovicianus*), horned lark (*Eremophila alpestris*), and nesting raptors be completed by a qualified biologist in the action area. Photocopies of the data and findings from the habitat assessments/surveys should be provided to the Service and the California Department of Fish and Game. The Service recommends that adequate avoidance or conservation measures be implemented if it is determined that any of these species will be adversely affected by the proposed project.

Portions of the proposed project are located within the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) Planning Area. We are concerned about the potential adverse effects of the proposed project on the California red-legged frog. We also are

concerned about effects on species that do not currently have a Federal listing status but are proposed for coverage under the draft HCP/NCCP (covered species). The proposed Silicon Valley Rapid Transit Project is considered an interim project under the HCP/NCCP Planning Agreement (County of Santa Clara *et al.* 2005). The Planning Agreement states that “The Parties agree that potential conflicts with the preliminary conservation objectives shall be identified during the Interim Process to help achieve the preliminary conservation objectives, not preclude important conservation planning options or connectivity between areas of high habitat values, and help guide and ensure development of a successful [HCP/NCCP] that incorporates these interim projects” (County of Santa Clara *et al.* 2005). Therefore, we recommend that the applicant review the draft HCP/NCCP chapters, which are available at <http://www.scv-habitatplan.org/www/default.aspx>, to ensure that the proposed project does not preclude the developing conservation strategy for covered species.

The County of Santa Clara should contact NOAA - Fisheries regarding the potential effects of this project on the listed species, and animals and plants under their authority. The NOAA - Fisheries contact may be reached at: [Jonathan.Ambrose@noaa.gov](mailto:Jonathan.Ambrose@noaa.gov).

If you have any questions, please contact me via electronic mail or at telephone 916/414-6600.

s/Christopher D. Nagano

Deputy Assistant Field Supervisor  
Endangered Species Program  
Sacramento Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2800 Cottage Way Room W-2605  
Sacramento, California 95825

#### Literature Cited

County of Santa Clara, Santa Clara Valley Water District, City of Gilroy, City of Morgan Hill, City of San Jose, Santa Clara Valley Transportation Authority, California Department of Fish and Game, and the United States Fish and Wildlife Service. 2005. Planning Agreement by and among the County of Santa Clara, the Santa Clara Valley Water District, the City of Gilroy, the City of Morgan Hill, the City of San Jose, the Santa Clara Valley Transportation Authority, the California Department of Fish and Game, and the United States Fish and Wildlife Service regarding the Santa Clara Valley Natural Community Conservation Plan. San Jose, California



November 20, 2007

Milford Wayne Donaldson, FAIA, State Historic Preservation Officer  
California Office of Historic Preservation  
Office of Historic Preservation  
P.O. Box 942896  
Sacramento, CA 94296-0001

Subject: Silicon Valley Rapid Transit Corridor Project

Dear Mr. Donaldson:

In March 2003, the Federal Transit Administration (FTA) and the Santa Clara Valley Transportation Authority (VTA) began consultations with the Office of Historic Preservation (OHP) for the Silicon Valley Rapid Transit Corridor Project (SVRTC). Since our last contact, the design of the SVRTC has progressed. VTA is now preparing the Revised Draft Environmental Impact Statement for the project as it is currently designed.

To account for the project design changes, the cultural resources technical studies are being updated. Far Western Anthropological Research Group, VTA's archaeological consultant, is working on a *Revised Archaeological Survey and Sensitivity Report* for the current project and JRP Historical Consulting, VTA's historical consultant, is working on an *Addendum Historical Resources Inventory* to cover the changes in the project since the January 2003 *Historical Resources Evaluation Report* was completed. One of the project changes under consideration has the potential to affect a National Register building in downtown San Jose.

VTA would like to meet with the OHP to discuss the project changes and determine the best way to proceed on this project. Attached, for your reference, is a summary of our consultation efforts to date.

Please contact Lauren Bobadilla at (408) 321-5776 or [lauren.bobadilla@vta.org](mailto:lauren.bobadilla@vta.org) and she will arrange the meeting. We appreciate your attention and cooperation on this large-scale, high profile public transportation project, and look forward to continuing our consultation with you.

Sincerely,

Thomas W. Fitzwater, AICP  
Environmental Programs and Resources Management Manager

TWF:LGB:kh

cc: Jerome Wiggins, FTA  
Allika Ruby, Far Western  
Meta Bunse, JRP

Attachment

**SILICON VALLEY RAPID TRANSIT CORRIDOR PROJECT BY FTA/VTA  
SUMMARY OF CULTURAL RESOURCES CONSULTATION WITH SHPO**

<b>Date</b>	<b>Letter</b>	<b>Discussion</b>
3/19/03	Letter FTA to SHPO	<ul style="list-style-type: none"> <li>• Initiation of consultation with SHPO;</li> <li>• Authorization of VTA to consult directly with SHPO;</li> <li>• Submittal of APE, ASSR, &amp; HRER for review.</li> </ul>
6/9/03	Letter SHPO to FTA	<ul style="list-style-type: none"> <li>• Recommend APE include the bored tunnel or explain rationale for excluding tunnel;</li> <li>• Concur that the 20 NR eligible properties are still eligible;</li> <li>• Concur that 11 properties determined eligible for NR are eligible;</li> <li>• Other properties are not eligible under Criterion A;</li> <li>• Inventory of archaeological resources is adequate if FTA proposes to use a phased process for identification and evaluation and if FTA consults with SHPO on subsequent phases.</li> </ul>
7/2/03	Letter JRP/VTA to SHPO	<ul style="list-style-type: none"> <li>• Request for clarification on eligibility determination for Santa Clara tower;</li> <li>• Request for clarification on significance of other 6 properties under all criteria.</li> </ul>
7/9/03	Letter SHPO to FTA	<ul style="list-style-type: none"> <li>• 884 E. Santa Clara Street (11-24 / 467-30-005) is not eligible under any criteria;</li> <li>• 17-25 E. Santa Clara Street (12-33 / 467-21-024) is not eligible under any criteria;</li> <li>• 127-145 Post Street &amp; 33-45 S. Market Street (12-45 / 259-40-021 &amp; 028) is not eligible under any criteria;</li> <li>• 101 W. Santa Clara Street (12-47 / 259-34-046) is eligible for NR;</li> <li>• 151 W. Santa Clara Street (12-53 / 259-35-049) assumed eligible for NR;</li> <li>• 161-167 W. Santa Clara Street (12-54 / 259-35-035) is not eligible under any criteria;</li> <li>• Santa Clara Tower, Benton Street &amp; Railroad Avenue (15-03 / 230-06-040) was and still is eligible for NR.</li> </ul>
9/5/03	Letter Far Western /VTA to SHPO	<ul style="list-style-type: none"> <li>• Explained why bored tunnel is not in APE;</li> <li>• Explains VTA's intention to conduct a phased process of identification and evaluation;</li> <li>• Requests meeting to discuss.</li> </ul>
10/30/03	Meeting Far Western /JRP /VTA with SHPO	<ul style="list-style-type: none"> <li>• Discussed phased process.</li> <li>• VTA to submit letter to SHPO with additional information.</li> </ul>
02/13/04	Letter VTA/Far Western to SHPO	<p>Provided information and requested concurrence on the following:</p> <ul style="list-style-type: none"> <li>• Portal gradients are adequately defined and that the APE is adequately defined;</li> <li>• Deep tunnel monitoring is infeasible;</li> <li>• Proposed plan phasing will adequately satisfy Section 106.</li> </ul>

<b>Date</b>	<b>Letter</b>	<b>Discussion</b>
5/6/04	Letter SHPO to VTA	Response to February 13, 2004 letter. <ul style="list-style-type: none"> <li>• SHPO believes the entire subsurface extent of the project should be in the APE.</li> <li>• Acknowledged that monitoring during excavation/tunneling is dangerous and is an unnecessary risk.</li> <li>• Identification efforts are not yet adequate.</li> </ul>
7/14/04	Letter VTA/Far Western to SHPO	Response to May 6, 2004 letter. <ul style="list-style-type: none"> <li>• APE amended to include the deep tunnel.;</li> <li>• Restated understanding that project will have adverse effects on historic properties and plan to execute MOA to resolve the impacts. Submitted Draft MOA for SHPO review and comment.</li> </ul>
8/3/04	Letter SHPO to VTA	Response to July 14, 2004 letter. <ul style="list-style-type: none"> <li>• Asked for explicit statement of the APE's complete extent and is not able to concur on adequacy of APE.</li> <li>• Asked for VTA to submit documentation of VTA's application of the criteria of adverse effect for the historic properties presently known to be in the APE and a statement of the finding of effect.</li> </ul>
7/12/05	Letter VTA/Far Western to SHPO	Response to August 3, 2004 letter. <ul style="list-style-type: none"> <li>• Sent revised APE description, modified to include the tunnel;</li> <li>• Request concurrence on adequacy of APE.</li> <li>• Explained that VTA is using a phased process to apply the criteria of adverse effects, consistent with phased identification and evaluation efforts as allowed.</li> <li>• Request concurrence on the appropriateness of using a phased process.</li> <li>• Statement that project will have an adverse effect &amp; submitted draft MOA.</li> <li>• Requested concurrence that there will be an adverse effect and that a MOA &amp; CRTP is appropriate.</li> </ul>
9/20/05	Letter OHP to VTA	Response to July 12, 2005 letter. <ul style="list-style-type: none"> <li>• Concurred on the adequacy of the APE.</li> <li>• No comments on MOA until review FOE.</li> </ul>



June 25, 2008

Milford Wayne Donaldson, FAIA, State Historic Preservation Officer  
California Office of Historic Preservation  
Office of Historic Preservation  
P.O. Box 942896  
Sacramento, CA 94296-0001

Subject: Silicon Valley Rapid Transit Corridor Project--FTA040219A

Dear Mr. Donaldson:

In March 2003, the Federal Transit Administration (FTA) and the Santa Clara Valley Transportation Authority (VTA) began consultations with the Office of Historic Preservation (OHP) for the Silicon Valley Rapid Transit Corridor Project (SVRTC). A map of the Area of Potential Effects (APE), a Historic Resources Evaluation Report (HRER), and an Archaeological Survey and Sensitivity Report (ASSR) were submitted to the OHP for review. By September 2005, after many months of consultations, the OHP had concurred on the adequacy of the APE and the eligibility of historic architectural properties within the APE.

Since our last consultation, an Environmental Impact Report (EIR) and Supplemental EIR have been approved by the VTA Board of Directors. Also, the design of the SVRTC has progressed and VTA is now preparing the Revised Draft Environmental Impact Statement for the current project.

To account for the project design changes, the cultural resources technical studies have been updated or revised. JRP Historical Consulting, VTA's historical consultant, has completed an *Addendum Historical Resources Inventory* to cover the changes in the project since the OHP concurred with the evaluations included in the 2003 *Historical Resources Evaluation Report*. In addition, Far Western Anthropological Research Group, VTA's archaeological consultant, has completed a *Revised Archaeological Survey and Sensitivity Report* for the current project.

The following cultural resources documents are now submitted to the OHP for review:

- The revised Area of Potential Effects (APE)
  - Figure 3.1. Addendum APE for Historic Architecture
  - Figure 4. Archaeological Study Area and Area of Potential Effects
- The "*Addendum Technical Memorandum: Historical Resources Inventory and Evaluation Report for SVRTC EIS*," June 2008 (Addendum HRER); and
- The "*Technical Memorandum: Archaeological Survey and Sensitivity Report for SVRTC EIS/SEIR Alternative*," March 2008 Revised Draft (Revised ASSR).

Milford Wayne Donaldson, FAIA, State Historic Preservation Officer  
June 25, 2008  
Page 2

Also enclosed, for your reference, are copies of the OHP/VTA/FTA consultation letters for this project and a CD containing the electronic files of all attachments to this letter.

FTA and VTA now request the following by the OHP:

- Review of the APES, Addendum HRER, and Revised ASSR;
- Concurrence on the adequacy of the project's APES;
- Concurrence on the adequacy of the identification effort for the architectural properties and the Addendum HRER;
- Concurrence on the appropriateness of using a phased process for applying the criteria of adverse effects regarding archaeological resources pursuant to CFR 800.5(a).
- Concurrence on the adequacy of the archaeological inventory and the Revised ASSR;
- Concurrence that the project will have an adverse effect on archaeological resources pursuant to 36 CFR 800.5 and that a Memorandum of Agreement (MOA), supported by a Cultural Resources Treatment Plan (CRTP), is an appropriate mechanism for resolving the adverse effects on archaeological resources in a phased manner pursuant to 36 CFR 800.6.

Please contact Lauren Bobadilla at (408) 321-5776 or [lauren.bobadilla@vta.org](mailto:lauren.bobadilla@vta.org) if you have any questions or would like to arrange a meeting to discuss the project.

We appreciate your attention and cooperation on this large-scale, high profile public transportation project, and look forward to continuing our consultation with you.

Sincerely,



Thomas W. Fitzwater, AICP  
Environmental Programs and Resources Management Manager

TWF:LGB:kh

cc: Jerome Wiggins, FTA  
Allika Ruby, Far Western  
Meta Bunse, JRP  
Phyllis Potter, CirclePoint

Enclosures

California Department of Fish and Game  
Natural Diversity Database  
Selected Elements by Scientific Name - Landscape

Scientific Name	Common Name	Element Code	Federal Status	State Status	Global Rank	State Rank	CNPS	CDFG
1 <i>Arctostaphylos andersonii</i>	Anderson's manzanita	PDERI04030			G2	S2?	1B.2	
2 <i>Astragalus tener</i> var. <i>tener</i>	alkali milk-vetch	PDFAB0F8R1			G1T1	S1.1	1B.2	
3 <i>Atriplex depressa</i>	brittlescale	PDCHE042L0			G2Q	S2.2	1B.2	
4 <i>Atriplex joaquiniana</i>	San Joaquin spearscale	PDCHE041F3			G2	S2.1	1B.2	
5 <i>Balsamorhiza macrolepis</i> var. <i>macrolepis</i>	big-scale balsamroot	PDAST11061			G3G4T2	S2.2	1B.2	
6 <i>California macrophylla</i>	round-leaved filaree	PDGER01070			G3	S3.1	1B.1	
7 <i>Campanula exigua</i>	chaparral harebell	PDCAM020A0			G2	S2.2	1B.2	
8 <i>Centromadia parryi</i> ssp. <i>congdonii</i>	Congdon's tarplant	PDAST4R0P1			G4T3	S3.2	1B.2	
9 <i>Chorizanthe robusta</i> var. <i>robusta</i>	robust spineflower	PDPGN040Q2	Endangered		G2T1	S1.1	1B.1	
10 <i>Cirsium fontinale</i> var. <i>campylon</i>	Mt. Hamilton fountain thistle	PDAST2E163			G2T2	S2.2	1B.2	
11 <i>Clarkia concinna</i> ssp. <i>automixa</i>	Santa Clara red ribbons	PDONA050A1			G5?T3	S3.3	4.3	
12 <i>Collinsia multicolor</i>	San Francisco collinsia	PDSCR0H0B0			G2	S2.2	1B.2	
13 <i>Cordylanthus maritimus</i> ssp. <i>palustris</i>	Point Reyes bird's-beak	PDSCR0J0C3			G4?T2	S2.2	1B.2	
14 <i>Dirca occidentalis</i>	western leatherwood	PDTHY03010			G2G3	S2S3	1B.2	
15 <i>Dudleya setchellii</i>	Santa Clara Valley dudleya	PDCRA040Z0	Endangered		G1	S1.1	1B.1	
16 <i>Eriogonum nudum</i> var. <i>decurrans</i>	Ben Lomond buckwheat	PDPGN08492			G5T2	S2.1	1B.1	
17 <i>Eryngium aristulatum</i> var. <i>hooveri</i>	Hoover's button-celery	PDAPI0Z043			G5T2	S2.1	1B.1	
18 <i>Fritillaria liliacea</i>	fragrant fritillary	PMLIL0V0C0			G2	S2.2	1B.2	
19 <i>Hoita strobilina</i>	Loma Prieta hoita	PDFAB5Z030			G2	S2.1	1B.1	
20 <i>Lasthenia conjugens</i>	Contra Costa goldfields	PDAST5L040	Endangered		G1	S1.1	1B.1	
21 <i>Malacothamnus arcuatus</i>	arcuate bush-mallow	PDMAL0Q0E0			G2Q	S2.2	1B.2	
22 <i>Malacothamnus hallii</i>	Hall's bush-mallow	PDMAL0Q0F0			G1Q	S1.2	1B.2	
23 <i>Monardella villosa</i> ssp. <i>globosa</i>	robust monardella	PDLAM180P7			G5T2	S2.2	1B.2	
24 <i>Navarretia prostrata</i>	prostrate vernal pool navarretia	PDPLM0C0Q0			G2?	S2.1?	1B.1	
25 <i>Plagiobothrys glaber</i>	hairless popcorn-flower	PDBOR0V0B0			GH	SH	1A	
26 <i>Sidalcea malachroides</i>	maple-leaved checkerbloom	PDMAL110E0			G3G4	S3S4.2	4.2	
27 <i>Streptanthus albidus</i> ssp. <i>albidus</i>	Metcalf Canyon jewel-flower	PDBRA2G011	Endangered		G2T1	S1.1	1B.1	
28 <i>Streptanthus albidus</i> ssp. <i>peramoenus</i>	most beautiful jewel-flower	PDBRA2G012			G2T2	S2.2	1B.2	
29 <i>Suaeda californica</i>	California seablite	PDCHE0P020	Endangered		G1	S1.1	1B.1	
30 <i>Tropidocarpum capparideum</i>	caper-fruited tropidocarpum	PDBRA2R010			G1	S1.1	1B.1	



California Department of Fish and Game  
Natural Diversity Database  
Selected Elements by Common Name - Landscape

Common Name	Scientific Name	Element Code	Federal Status	State Status	Global Rank	State Rank	CNPS	CDFG
1 Alameda song sparrow	Melospiza melodia pusillula	ABPBXA301S			G5T2?	S2?		SC
2 Alameda whipsnake	Masticophis lateralis euryxanthus	ARADB21031	Threatened	Threatened	G4T2	S2		
3 American peregrine falcon	Falco peregrinus anatum	ABNKD06071	Delisted	Endangered	G4T3	S2		
4 Bay checkerspot butterfly	Euphydryas editha bayensis	IILEPK4055	Threatened		G5T1	S1		
5 Berkeley kangaroo rat	Dipodomys heermanni berkeleyensis	AMAFD03061			G3G4T1	S1		
6 California black rail	Laterallus jamaicensis coturniculus	ABNME03041		Threatened	G4T1	S1		
7 California clapper rail	Rallus longirostris obsoletus	ABNME05016	Endangered	Endangered	G5T1	S1		
8 California red-legged frog	Rana draytonii	AAABH01022	Threatened		G4T2T3	S2S3		SC
9 California tiger salamander	Ambystoma californiense	AAAAA01180	Threatened		G2G3	S2S3		SC
10 Cooper's hawk	Accipiter cooperii	ABNKC12040			G5	S3		
11 Hom's micro-blind harvestman	Microcina homi	ILARA47020			G1	S1		
12 Opler's longhorn moth	Adela oplerella	IILEE0G040			G2G3	S2S3		
13 San Francisco dusky-footed woodrat	Neotoma fuscipes annectens	AMAFF08082			G5T2T3	S2S3		SC
14 San Joaquin kit fox	Vulpes macrotis mutica	AMAJA03041	Endangered	Threatened	G4T2T3	S2S3		
15 Santa Cruz kangaroo rat	Dipodomys venustus venustus	AMAFD03042			G4T1	S1		
16 Townsend's big-eared bat	Corynorhinus townsendii	AMACC08010			G4	S2S3		SC
17 Yuma myotis	Myotis yumanensis	AMACC01020			G5	S4?		
18 burrowing owl	Athene cucularia	ABNSB10010			G4	S2		SC
19 foothill yellow-legged frog	Rana boylei	AAABH01050			G3	S2S3		SC
20 golden eagle	Aquila chrysaetos	ABNKC22010			G5	S3		
21 great blue heron	Ardea herodias	ABNGA04010			G5	S4		
22 hoary bat	Lasiurus cinereus	AMACC05030			G5	S4?		
23 mimic tryonia (=California brackishwater snail)	Tryonia imitator	IMGASJ7040			G2G3	S2S3		
24 pallid bat	Antrozous pallidus	AMACC10010			G5	S3		SC
25 salt-marsh harvest mouse	Reithrodontomys raviventris	AMAFF02040	Endangered	Endangered	G1G2	S1S2		
26 salt-marsh wandering shrew	Sorex vagrans halicoetes	AMABA01071			G5T1	S1		SC
27 saltmarsh common yellowthroat	Geothlypis trichas sinuosa	ABPBX1201A			G5T2	S2		SC
28 steelhead - Central California Coast ESU	Oncorhynchus mykiss irideus	AFCHA0209G	Threatened		G5T2Q	S2		
29 tricolored blackbird	Agelaius tricolor	ABPBXB0020			G2G3	S2		SC
30 vernal pool tadpole shrimp	Lepidurus packardi	ICBRA10010	Endangered		G3	S2S3		
31 western pond turtle	Actinemys marmorata	ARAAD02030			G3G4	S3		SC
32 western snowy plover	Charadrius alexandrinus nivosus	ABNNB03031	Threatened		G4T3	S2		SC
33 white-tailed kite	Elanus leucurus	ABNKC06010			G5	S3		



# California Regional Water Quality Control Board

## San Francisco Bay Region



Linda S. Adams  
Secretary for  
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor

Date: October 21, 2008  
File No. 43S1073 (AVC)

Santa Clara Valley Transit Authority (VTA)  
Attn: Mr. Wes Toy  
[wes.toy@vta.org](mailto:wes.toy@vta.org)  
3331 North First Street  
San Jose, CA 95134-1906

**SUBJECT: Approval of the Contaminant Management Plan for the Bay Area Rapid Transit (BART) Extension Project to Milpitas, San Jose, and Santa Clara, Santa Clara County**

Dear Mr. Toy:

This letter responds to your March 2006 Contaminant Management Plan (CMP) prepared by your consultant, AECOM, Inc., formerly Earth Tech, Inc. As explain below, I approve the CMP and require VTA to submit draft remedial action plans, draft fact sheets, and radius lists for individual project segments.

### **Background**

The BART extension project (Project) will extend the BART system south from the currently planned Warm Springs station in Fremont through Milpitas to Santa Clara Street in San Jose, southwest through downtown San Jose, and then northwest to Santa Clara. The Project is divided into three distinct segments, and detailed project design reports will be produced for each segment. Construction activities at the Project will likely expose contaminated soils, groundwater, and/or other hazardous materials where they could be a potential concern to human health and the environment.

### **CMP Summary**

The CMP is intended for use during design and construction of the Project. The CMP describes how all potentially-contaminated materials associated with the Project will be characterized, evaluated, handled, transported, stored, and treated. It also provides criteria for material reuse, and contains a public participation plan.

### **Water Board Response and Requirement**

The CMP satisfied Water Board requirements. I hereby approve the CMP.

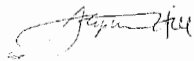
*Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years*

For each Project segment, VTA is required to submit a draft remedial action plan, a draft fact sheet, and a mailing list for surrounding property owners and resident/occupants within a 1000-foot radius of the contaminant management sites. The mailing list should also include any other interested parties or groups, including relevant public agencies and environmental/community groups. **VTA shall submit these reports at least 90 days prior to the start of any remedial action on that Project segment.**

This requirement for reports is made pursuant to Water Code Section 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Water Board staff.

If you have any questions, please contact Adriana Constantinescu of my staff at (510) 622-2353 [e-mail [AConstantinescu@waterboards.ca.gov](mailto:AConstantinescu@waterboards.ca.gov)].

Sincerely,



Digitally signed by Stephen Hill  
Date: 2008.10.21 14:11:11 -07'00'

Bruce H. Wolfe  
Executive Officer

Attachment: 13267 Fact Sheet  
cc:

AECOM, Inc.  
Mr. Dan Ruslen  
[zeynep.ungun@earthtech.com](mailto:zeynep.ungun@earthtech.com)  
695 River Oaks Parkway  
San Jose, CA 95134

City of Milpitas  
Mr. Greg Armendariz, City Engineer  
[garmendariz@ci.milpitas.ca.gov](mailto:garmendariz@ci.milpitas.ca.gov)  
455 East Calaveras Boulevard  
Milpitas, CA 95035

City of Fremont  
Ms. Jan Perkins, City Manager  
[JPerkins@ci.fremont.ca.gov](mailto:JPerkins@ci.fremont.ca.gov)  
3300 Capitol Avenue  
Fremont, CA 94538

City of San Jose  
Department of Planning  
Mr. Laurel Prevetti  
[LPrevetti@sanjoseca.gov](mailto:LPrevetti@sanjoseca.gov)  
801 North First Street, Room 400  
San Jose, CA 95110



### Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

#### **What does it mean when the Regional Water Board requires a technical report?**

Section 13267<sup>1</sup> of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

#### **This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?**

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

#### **Are there limits to what the Regional Water Board can ask for?**

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

#### **What if I can provide the information, but not by the date specified?**

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

#### **Are there penalties if I don't comply?**

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

#### **Do I have to use a consultant or attorney to comply?**

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

#### **What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?**

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

#### **If I have more questions, whom do I ask?**

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

*Revised January 2008*

<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov).



**United States Department of the Interior**  
**FISH AND WILDLIFE SERVICE**

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825



November 10, 2008

Document Number: 081110030347

Ann Calnan  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building B-2  
San Jose, CA 95134

Subject: Species List for Silicon Valley Rapid Transit Corridor (study area)

Dear: Ms. Calnan

We are sending this official species list in response to your November 10, 2008 request for information about endangered and threatened species. The list covers the California counties and/or U.S. Geological Survey 7½ minute quad or quads you requested.

Our database was developed primarily to assist Federal agencies that are consulting with us. Therefore, our lists include all of the sensitive species that have been found in a certain area *and also ones that may be affected by projects in the area*. For example, a fish may be on the list for a quad if it lives somewhere downstream from that quad. Birds are included even if they only migrate through an area. In other words, we include all of the species we want people to consider when they do something that affects the environment.

Please read Important Information About Your Species List (below). It explains how we made the list and describes your responsibilities under the Endangered Species Act.

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed and candidate species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be February 08, 2009.

Please contact us if your project may affect endangered or threatened species or if you have any questions about the attached list or your responsibilities under the Endangered Species Act. A list of Endangered Species Program contacts can be found at [www.fws.gov/sacramento/es/branches.htm](http://www.fws.gov/sacramento/es/branches.htm).

Endangered Species Division



**U.S. Fish & Wildlife Service**  
**Sacramento Fish & Wildlife Office**  
Federal Endangered and Threatened Species that Occur in  
or may be Affected by Projects in the Counties and/or  
U.S.G.S. 7 1/2 Minute Quads you requested  
Document Number: 081110031056  
Database Last Updated: September 11, 2008

---

Quad Lists

CALAVERAS RESERVOIR (427A)

Listed Species

Invertebrates

*Euphydryas editha bayensis*

bay checkerspot butterfly (T)

Fish

*Hypomesus transpacificus*

delta smelt (T)

*Oncorhynchus mykiss*

Central California Coastal steelhead (T) (NMFS)

Central Valley steelhead (T) (NMFS)

Critical habitat, Central California coastal steelhead (X) (NMFS)

*Oncorhynchus tshawytscha*

Central Valley spring-run chinook salmon (T) (NMFS)

winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

*Ambystoma californiense*

California tiger salamander, central population (T)

Critical habitat, CA tiger salamander, central population (X)

*Rana aurora draytonii*

California red-legged frog (T)

Critical habitat, California red-legged frog (X)

Reptiles

*Masticophis lateralis euryxanthus*

Alameda whipsnake [=striped racer] (T)

Critical habitat, Alameda whipsnake (X)

Birds

*Sternula antillarum* (= *Sterna*, = *albifrons*) *browni*

California least tern (E)

Mammals

*Vulpes macrotis mutica*

San Joaquin kit fox (E)

MILPITAS (427B)

Listed Species

Invertebrates

*Branchinecta conservatio*

Conservancy fairy shrimp (E)

*Euphydryas editha bayensis*

bay checkerspot butterfly (T)

*Lepidurus packardii*

Critical habitat, vernal pool tadpole shrimp (X)

vernal pool tadpole shrimp (E)

Fish

*Hypomesus transpacificus*

delta smelt (T)

*Oncorhynchus mykiss*

Central California Coastal steelhead (T) (NMFS)

Central Valley steelhead (T) (NMFS)

Critical habitat, Central California coastal steelhead (X) (NMFS)

*Oncorhynchus tshawytscha*

Central Valley spring-run chinook salmon (T) (NMFS)

winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

*Ambystoma californiense*

California tiger salamander, central population (T)

*Rana aurora draytonii*

California red-legged frog (T)

Reptiles

*Masticophis lateralis euryxanthus*

Alameda whipsnake [=striped racer] (T)

Birds

*Charadrius alexandrinus nivosus*

western snowy plover (T)

*Rallus longirostris obsoletus*

California clapper rail (E)

*Sternula antillarum* (=Sterna, =albifrons) browni

California least tern (E)

Mammals

*Reithrodontomys raviventris*

salt marsh harvest mouse (E)

*Vulpes macrotis mutica*

San Joaquin kit fox (E)

Plants

*Lasthenia conjugens*

Contra Costa goldfields (E)

Critical habitat, Contra Costa goldfields (X)

*Suaeda californica*

California sea blite (E)

SAN JOSE WEST (427C)

Listed Species

Invertebrates

*Euphydryas editha bayensis*

bay checkerspot butterfly (T)

Fish

*Hypomesus transpacificus*

delta smelt (T)

*Oncorhynchus mykiss*

Central California Coastal steelhead (T) (NMFS)

Central Valley steelhead (T) (NMFS)

Critical habitat, Central California coastal steelhead (X) (NMFS)

*Oncorhynchus tshawytscha*

Central Valley spring-run chinook salmon (T) (NMFS)

winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

*Ambystoma californiense*

California tiger salamander, central population (T)

*Rana aurora draytonii*

California red-legged frog (T)

Birds

*Rallus longirostris obsoletus*

California clapper rail (E)

*Sternula antillarum* (=Sterna, =albifrons) browni

California least tern (E)

SAN JOSE EAST (427D)

Listed Species

Invertebrates

*Euphydryas editha bayensis*

bay checkerspot butterfly (T)

Critical habitat, bay checkerspot butterfly (X)

Fish

*Hypomesus transpacificus*

delta smelt (T)

*Oncorhynchus mykiss*

Central California Coastal steelhead (T) (NMFS)

Central Valley steelhead (T) (NMFS)

Critical habitat, Central California coastal steelhead (X) (NMFS)

*Oncorhynchus tshawytscha*

Central Valley spring-run chinook salmon (T) (NMFS)

winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

*Ambystoma californiense*

California tiger salamander, central population (T)

*Rana aurora draytonii*

California red-legged frog (T)

Critical habitat, California red-legged frog (X)

Birds

*Sternula antillarum* (=Sterna, =albifrons) browni  
California least tern (E)

Mammals

*Vulpes macrotis mutica*  
San Joaquin kit fox (E)

Plants

*Dudleya setchellii*  
Santa Clara Valley dudleya (E)

*Streptanthus albidus* ssp. *albidus*  
Metcalf Canyon jewelflower (E)

CUPERTINO (428D)

Listed Species

Invertebrates

*Euphydryas editha bayensis*  
bay checkerspot butterfly (T)

Fish

*Hypomesus transpacificus*  
delta smelt (T)

*Oncorhynchus kisutch*  
coho salmon - central CA coast (E) (NMFS)

*Oncorhynchus mykiss*  
Central California Coastal steelhead (T) (NMFS)  
Central Valley steelhead (T) (NMFS)  
Critical habitat, Central California coastal steelhead (X) (NMFS)

*Oncorhynchus tshawytscha*  
Central Valley spring-run chinook salmon (T) (NMFS)  
winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

*Ambystoma californiense*  
California tiger salamander, central population (T)

*Rana aurora draytonii*  
California red-legged frog (T)

Birds

*Brachyramphus marmoratus*  
marbled murrelet (T)

*Rallus longirostris obsoletus*  
California clapper rail (E)

*Sternula antillarum* (=Sterna, =albifrons) browni  
California least tern (E)

NILES (446C)

Listed Species

Invertebrates

*Branchinecta conservatio*  
Conservancy fairy shrimp (E)

*Branchinecta lynchi*  
vernal pool fairy shrimp (T)

*Euphydryas editha bayensis*  
bay checkerspot butterfly (T)

*Lepidurus packardii*  
Critical habitat, vernal pool tadpole shrimp (X)  
vernal pool tadpole shrimp (E)

Fish

*Hypomesus transpacificus*  
delta smelt (T)

*Oncorhynchus mykiss*  
Central California Coastal steelhead (T) (NMFS)  
Central Valley steelhead (T) (NMFS)

*Oncorhynchus tshawytscha*  
winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

*Ambystoma californiense*  
California tiger salamander, central population (T)

*Rana aurora draytonii*  
California red-legged frog (T)

Reptiles



*Masticophis lateralis euryxanthus*  
Alameda whipsnake [=striped racer] (T)  
Critical habitat, Alameda whipsnake (X)

#### Birds

*Sternula antillarum* (= *Sterna*, = *albifrons*) *browni*  
California least tern (E)

#### Mammals

*Reithrodontomys raviventris*  
salt marsh harvest mouse (E)

*Vulpes macrotis mutica*  
San Joaquin kit fox (E)

#### Plants

*Lasthenia conjugens*  
Contra Costa goldfields (E)  
Critical habitat, Contra Costa goldfields (X)

---

### County Lists

No county species lists requested.

#### Key:

- (E) *Endangered* - Listed as being in danger of extinction.
- (T) *Threatened* - Listed as likely to become endangered within the foreseeable future.
- (P) *Proposed* - Officially proposed in the Federal Register for listing as endangered or threatened.
- (NMFS) Species under the Jurisdiction of the [National Oceanic & Atmospheric Administration Fisheries Service](#). Consult with them directly about these species.
- Critical Habitat* - Area essential to the conservation of a species.
- (PX) *Proposed Critical Habitat* - The species is already listed. Critical habitat is being proposed for it.
- (C) *Candidate* - Candidate to become a proposed species.
- (V) Vacated by a court order. Not currently in effect. Being reviewed by the Service.
- (X) *Critical Habitat* designated for this species

### Important Information About Your Species List

#### How We Make Species Lists

We store information about endangered and threatened species lists by U.S. Geological Survey 7½ minute quads. The United States is divided into these quads, which are about the size of San Francisco.

The animals on your species list are ones that occur within, **or may be affected by** projects within, the quads covered by the list.

- Fish and other aquatic species appear on your list if they are in the same watershed as your quad or if water use in your quad might affect them.
- Amphibians will be on the list for a quad or county if pesticides applied in that area may be carried to their habitat by air currents.
- Birds are shown regardless of whether they are resident or migratory. Relevant birds on the county list should be considered regardless of whether they appear on a quad list.

#### Plants

Any plants on your list are ones that have actually been observed in the area covered by the list. Plants may exist in an area without ever having been detected there. You can find what's in the surrounding quads through the California Native Plant Society's online [Inventory of Rare and Endangered Plants](#).

#### Surveying

Some of the species on your list may not be affected by your project. A trained biologist and/or botanist, familiar with the habitat requirements of the species on your list, should determine whether they or habitats suitable for them may be affected by your project. We recommend that your surveys include any proposed and candidate species on your list. See our [Protocol](#) and [Recovery Permits](#) pages.

For plant surveys, we recommend using the [Guidelines for Conducting and Reporting Botanical Inventories](#). The results of your surveys should be published in any environmental documents prepared for your project.

#### Your Responsibilities Under the Endangered Species Act

All animals identified as listed above are fully protected under the Endangered Species Act of 1973, as amended. Section 9 of the Act and its implementing regulations prohibit the taking of a federally listed wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any such animal.

Take may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or shelter (50 CFR §17.3).

Take incidental to an otherwise lawful activity may be authorized by one of two procedures:

- If a Federal agency is involved with the permitting, funding, or carrying out of a project that may result in take, then that agency must engage in a formal [consultation](#) with the Service.  
During formal consultation, the Federal agency, the applicant and the Service work together to avoid or minimize the impact on listed species and their habitat. Such consultation would rest on biological opinion by the Service addressing the anticipated effect of the project on listed and proposed species. The opinion may authorize a limited level of incidental take.
- If no Federal agency is involved with the project, and federally listed species may be taken as part of the project, then you, the applicant, should apply for an incidental take permit. The Service may issue such a permit if you submit a satisfactory conservation plan for the species that would be affected by your project.  
Should your survey determine that federally listed or proposed species occur in the area and are likely to be affected by the project, we recommend that you work with this office and the California Department of Fish and Game to develop a plan that minimizes the project's direct and indirect impacts to listed species and compensates for project-related loss of habitat. You should include the plan in any environmental documents you file.

#### Critical Habitat

When a species is listed as endangered or threatened, areas of habitat considered essential to its conservation may be designated as critical habitat. These areas may require special management considerations or protection. They provide needed space for growth and normal behavior; food, water, air, light, other nutritional or physiological requirements; cove shelter; and sites for breeding, reproduction, rearing of offspring, germination or seed dispersal.

Although critical habitat may be designated on private or State lands, activities on these lands are not restricted unless there is Federal involvement in the activities or direct harm to listed wildlife.

If any species has proposed or designated critical habitat within a quad, there will be a separate line for this on the species list. Boundary descriptions of the critical habitat may be found in the Federal Register. The information is also reprinted in the Code of Federal Regulations (50 CFR 17.95). See our [Map Room](#) page.

#### Candidate Species

We recommend that you address impacts to candidate species. We put plants and animals on our candidate list when we have enough scientific information to eventually propose for listing as threatened or endangered. By considering these species early in your planning process you may be able to avoid the problems that could develop if one of these candidates was listed before the end of your project.

#### Species of Concern

The Sacramento Fish & Wildlife Office no longer maintains a list of species of concern. However, various other agencies and organizations maintain lists of at-risk species. These lists

provide essential information for land management planning and conservation efforts. [More info](#)

#### Wetlands

If your project will impact wetlands, riparian habitat, or other jurisdictional waters as defined by section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act will need to obtain a permit from the U.S. Army Corps of Engineers. Impacts to wetland habitats require site specific mitigation and monitoring. For questions regarding wetlands, contact Mark Littlefield of this office at (916) 414-6580.

#### Updates

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed and candidate species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be February 08, 2009.