

DEPARTMENT OF TRANSPORTATION**DISTRICT 1**

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June 27, 2014

Lieutenant Colonel John K. Baker, P.E.
District Engineer
United States Army Corps of Engineers
1455 Market Street
San Francisco, CA 94130-1398

Dear Lt. Col. Baker:

Thanks to you and your staff for meeting with me and my Caltrans project team on June 24, 2014 to discuss your June 20, 2014, letter and Notice of Permit Suspension of Department of Army Permit 1991-194740N for the MEN-101 Willits Bypass Project. I appreciated the opportunity to have this very cordial and informative meeting with you and your staff, and hope that we can mutually proceed to a quick resolution of this significant setback to our Willits Bypass construction project. As we discussed at our meeting, construction activities within the Corps' jurisdictional areas were halted immediately upon receipt of your June 20th letter.

Caltrans' responses to each issue are presented below in the order they were outlined in your June 20th letter.

Issue #1: Special Condition 1

Response:

We are committed to environmental mitigation on this project, which is one of the largest mitigation efforts in Caltrans' history. Caltrans does not dispute that it, "shall mitigate for permanent impacts to 42.76 acres and temporary impacts to 22.91 acres ... associated with Phase 1 ... through restoration (rehabilitation) of 344.63 acres and establishment of 49.58 acres of wetlands and the rehabilitation of 19.03 acres of other waters of the U.S." Caltrans acknowledges that implementation of a number of elements of the Willits Bypass Mitigation Project have been delayed for a number of unforeseen reasons, as has the actual construction of the Willits Bypass. Primarily due to the Mitigation Project contract bids coming in excessively over the Engineer's Estimate, Caltrans needed to reject the bids and repackage the advertised bid package into smaller contracts that should be less costly and more biddable by qualified contractors. While processing the repackaged contracts, Caltrans has itself undertaken items of work that were originally encompassed in the Mitigation Project. This work will accelerate accomplishment of Mitigation Project deliverables, and includes performing some essential mitigation site preparation work under a Bypass Project contract change order (CCO), undertaking required archaeological surveys and testing under a consultant contract with Pacific

Legacy, Inc., performing performance monitoring with both consultants and Caltrans staff, and developing four separate service contracts for seed collection and plant propagation.

The details of Caltrans' progress and anticipated schedule for implementation are set forth in the following sections of this letter. In summary, Caltrans is making good progress on advancing the mitigation work and expects to further accelerate that work as the repackaged Mitigation Project contracts come on line. In short, Caltrans is diligently striving to achieve mitigation success given the financial, logistical and accountability requirements of a public agency. Special Condition 1 of the Permit anticipates that delays in the mitigation implementation schedule may transpire, and that in such cases, Caltrans may be required to provide additional mitigation to compensate for temporal loss, a consequence Caltrans understands and will accept.

Issue #2: Special Condition 3

Response:

As discussed at our meeting, your office accepted Caltrans' last financial assurance letter on July 8, 2013, as Permit-compliant. We sought clarification as to whether, and in what manner, your office deems Caltrans to be out of compliance with this Condition, at this time, and you offered to provide follow-up clarification regarding this issue. Meanwhile, Caltrans additionally responds as follows:

33 C.F.R. § 332.3(n)(1) allows the USACE to accept a "formal documented commitment from a government agency or public authority" as an alternate mechanism to other enumerated forms of financial assurance. Caltrans has previously provided the USACE correspondence on several occasions which formally confirmed that construction of the Willits Bypass Mitigation Project is fully funded. Specifically, letters sent to your office dated August 13, 2010, May 18, 2012, September 24, 2012, and July 8, 2013, documented financial assurances for the Mitigation Project, per requirements of 33 CFR § 332.3 and in accordance with USACE regulatory requirements.

An October 4, 2012 letter to the USACE noted that Caltrans had purchased in fee title all of the Mitigation Project properties for a total of \$14.7 million, and outlined the estimated costs of construction, short-term performance monitoring and maintenance activities, and a long-term mitigation management non-wasting endowment for the Mitigation Project. A February 7, 2013 letter to the USACE confirmed the California Transportation Commission (CTC)'s programming of \$47.82 million for the capital construction phase of the Mitigation Project, plus use of \$6.25 million of federal demonstration program funds (total of \$54.07 million). That letter also noted that the programmed funds are reserved strictly for the Mitigation Project only, and that they would not be used for cost overruns on the Bypass Project or for any other work other than the Mitigation Project.

As explained in our meeting on June 24, 2014, and previously on January 28, 2014, Caltrans rejected the contract bids for construction of the Mitigation Project last fall when the bids came in excessively high (approximately 200% over the Engineer's Estimate). Caltrans then requested and received approval from the CTC for a 20-month extension of the funding commitment to August 2015 to allow Caltrans time to repackage the Mitigation Project contract into several

smaller, more biddable contracts. That effort is proceeding well, with the first Mitigation Project contract expected to be advertised this fall and awarded in February 2015. With a 55-day delayed start to allow the contractor time to secure property for storage yards, approval of the Storm Water Pollution Prevention Plan, etc., work will commence in April 2015. The remaining contracts will be rolled out with staggered start dates shortly afterward.

In the meantime, Caltrans has undertaken a number of steps to expedite the Mitigation Project and ensure that the requisite funding is in place when needed for each component of the Mitigation Project. On September 19, 2013, Caltrans executed a contract change order (CCO) under the Bypass construction project for infrastructure site preparation work on the mitigation properties, including removal of existing cross fencing and debris removal, and new fence installation on 404 lands. By fall of 2013, all remaining grazing leases were cancelled on mitigation lands designated for the USACE. On April 10, 2014, Caltrans initiated a \$3.2 million CCO for installation of cattle exclusion fencing on designated mitigation lands and installation of water lines. Caltrans is undertaking the short-term performance monitoring and maintenance activities with internal capital outlay support consultant and staff resources. As part of our process to revise the State Agencies Mitigation & Monitoring Proposal (State MMP), Caltrans staff have worked extensively with the Mendocino County Resource Conservation District (MCRCD) and their mitigation consultant, the California Department of Fish & Wildlife (CDFW) and the North Coast Regional Water Quality Control Board (NCRWQCB) to develop a revised Property Analysis Record (PAR), which is a financial tool used to estimate the endowment needed for the long-term management of a mitigation project. That endowment will be processed and financed with a Program Change Request (PCR) within Caltrans over the next several months, with a target of having a transfer agreement and actual transfer of the funds to the endowment holder, the National Fish & Wildlife Foundation (NFWF) by the end of this calendar year. All of these activities are integral elements of the mitigation implementation schedule and final mitigation plan set forth in the Permit.

Since providing the last financial assurance letter to your office, Caltrans worked with CDFW and the NCRWQCB to revise the State MMP, which includes a chapter (Chapter 13 - enclosed) that addresses financial assurances for the Mitigation Project. The above-referenced letters of financial assurance, similar letters of financial assurance to CDFW and the NCRWQCB, and the recently revised State MMP all confirm Caltrans' financial ability and commitment to fulfilling its mitigation requirements. As a responsible public agency with decades of experience in successfully funding and developing large and complex public improvement projects, Caltrans remains committed to returning to the CTC to seek a supplemental vote as needed and at the appropriate time, should circumstances ever require.

Issue #3: Special Condition 5: The Permittee shall record a Conservation Easement (CE) in a form approved by the Corps...

Response:

As described in this permit condition, Caltrans must prepare and ultimately record CEs as part of the overall mitigation plan. However, the condition prohibits Caltrans from executing and recording any CE, "until it has received written approval from the Corps". Accordingly, a draft

Conservation Easement package was submitted to the USACE for review and input in an email correspondence dated August 24, 2012 (copy enclosed). There has been no response to this submittal from the USACE to-date. We are therefore unclear why this condition has been cited as a basis for a conditional suspension, and respectfully request further clarification on this point. Caltrans is committed to working diligently and intensively with the Corps on any issues identified during a review of the draft CE and to record them. Caltrans recently demonstrated its commitment and ability to do so by resolving all issues with state regulatory issues regarding CEs for the much larger areas of mitigation lands required by the State MMP.

Following those recent discussions with CDFW, Caltrans is now in agreement with CDFW that recording of the CEs may occur while Caltrans still holds title to the mitigation properties. Therefore, Caltrans intends to record the CEs on the mitigation lands prior to transfer of title to the MCRCD.

Issue #4: Financial Assurances...

Response:

Please see response to Issue #2 above.

Issue #5: Updated mitigation implementation schedule...

Response:

The Mitigation Project site preparation activities began in September 2013. In an effort to keep the Corps up-to-date on mitigation activities, on July 23, 2013, an updated Mitigation Project implementation schedule was sent via email. In that email, and a second one on July 25, 2013, Caltrans offered to meet, at the Corps' convenience, to discuss the updated Mitigation Project schedule and factors that have somewhat impeded Caltrans' ability to implement the actions listed in Figure 7-1 of the MMP in a timely manner. The Corps did not respond to either request to meet and confer.

In a correspondence dated September 27, 2013, Caltrans re-stated that the implementation schedule in Figure 7-1 of the January 2012 MMP had been modified and submitted to the USACE on July 23, 2013. The letter noted how the unprecedented size and comprehensive management requirements of this mitigation project resulted in additional time needed to develop the construction plans, specifications and contract. Caltrans requested a meeting to discuss this revised schedule. Unfortunately, no response was received.

In a January 28, 2014 meeting between USACE and Caltrans held at the Caltrans Construction Office in Willits, CA, Caltrans outlined the reasons for rejecting all mitigation contract bids, the need for schedule changes, and the strategy to restructure Mitigation Project contracts. A May 2, 2014, e-mail from Caltrans transmitted a revised schedule for awarding the repackaged mitigation contracts to the USACE. An additional revised "MMP Figure 7-1 (Mitigation Implementation Schedule)" (copy enclosed) was provided to the USACE in a Willits Bypass field meeting on June 17, 2014.

Baseline studies required by permit Special Condition 10 were designed according to standard nationwide professional practices, which were approved by the USACE before being conducted on the mitigation properties by qualified technical staff; a final report was submitted to the USACE in November 2012. At the USACE's request, the study methodology was subsequently modified and the baseline study was conducted a second time at considerable cost by Caltrans' mitigation consultants. Please note that the final report "*Baseline Vegetation Monitoring Results for Willits Bypass Project Off-site Wetland Rehabilitation Sites, August 2013*" was submitted to the USACE in September 2013, and subsequently accepted by the USACE. Upon the Corps' review of this final report, minor adjustments were made at two wetland rehabilitation Type locations, which were accepted by the USACE.

Issue #6: Corrective Measure 2 from the August 16, 2013 Non-Compliance Letter

Response:

Caltrans acknowledges that completion of site preparation activities did not and could not be completed by October 1, 2013 due to the Mitigation Project contract bids coming in excessively high. The Corps was first aware of specific site preparation tasks not progressing according to schedule (incomplete cattle exclusion fencing, debris and cross fence removal still needed on three of the eight large parcels) during a site compliance inspection on June 25, 2013, and then during a follow up telephone conversation with Caltrans staff on August 2, 2013. During this follow up discussion Caltrans staff informed the Corps alternative means would be used to accelerate the remaining site preparation work. Caltrans has since made every effort practicable to perform the site preparation work as quickly as possible, utilizing a contract change order, in-house and consultant resources to perform monitoring and archaeological testing, initial mitigation seed collection, and temporary stockpiling of wetland topsoil. These activities were outlined at our January 28, 2014 meeting and in other discussions with USACE staff. Site preparation activities were targeted for completion by the end of July 2014, before the conditional suspension of the 404 permit was issued on June 20, 2014.

Issue #7: Corrective Measure 3 from the August 16, 2013 USACE Non-Compliance Letter

Response:

As expressed in our January 14, 2014 meeting and again in a March 4, 2014 meeting with USACE staff, Caltrans has been anticipating USACE staff to respond to our requests for updating the Federal MMP. Caltrans welcomes a meeting or series of meetings with USACE staff to discuss revisions and updates to the MMP. As requested in Issue # 11 below, Caltrans will coordinate with the USACE to schedule that meeting and initiate the process prior to July 15, 2014. As noted in our June 24th meeting, Caltrans' recent successful collaboration with the CDFW and NCRWQCB to prepare a comprehensive revision of the State MMP document took about five months of intensive work by the involved parties. As noted above, Caltrans is certainly willing to go through a similar process with the USACE for the federal MMP, and will initiate this effort promptly.

Issue #8: Additional Corrective Measure 1 – Revised Implementation Schedule

Response:

Please see response to Issue #5 above. Caltrans understands that it is already in compliance with this additional corrective measure, but would appreciate clarification from the USACE if otherwise.

Issue #9: "Additional Corrective Measure #2" – Completed and signed native seed collection and propagule collection contract for the mitigation project by July 15, 2014

Response:

Initial seed collection efforts were conducted by Caltrans staff during the 2011 and 2012 seasons. Limited quantities of several varieties of native seed were collected and stored for later use by the Mitigation Project contractor. While the Mitigation Project contract is undergoing repackaging, Caltrans has entered into separate service contracts whereby contractors will perform seed collection and plant propagation work so that plants will be propagated and available for planting at the appropriate time needed by the contractors. Even under the original contract award schedule, seed collection and plant propagation could not have occurred any sooner than the scheduled work under the new service contracts.

The first service contract for seed collection has been executed and seed collection began on June 23, 2014. A second seed collecting contract is out for bids and is expected to be awarded by July 1, 2014. Plant propagation contracts are expected to be awarded by July 1st and July 15th and relevant documentation for all the service contracts will be forwarded to your office at that time.

Issue #10: "Additional Corrective Measure #3" - Itemized list of all mitigation project ground disturbing and fill activities for the remainder of 2014, due by July 15, 2014.

Response:

Mitigation Project site preparation activities, including removal of existing cross-fencing, installation of cattle exclusion fencing, removal of cattle from mitigation lands, and debris removal began in September 2013. Work has progressed deliberately and as quickly as our Caltrans legal, administrative and contracting processes allow. By October 1, 2013, new mitigation fencing to exclude cattle grazing was completed on at least 53% of USACE-required mitigation lands. To-date, most leases have expired and cattle have been removed from five of the eight large mitigation parcels. Various debris removal from the mitigation properties was completed by October 1, 2013.

Wetland topsoil to be used for future wetland establishment has been salvaged from the footprint of the bypass project and stockpiled on the MGC Plasma property. In addition, Caltrans continues to consult with the local Native American tribes and conduct supplemental archaeological testing to ensure any cultural resources are properly protected and addressed during activities conducted on the offsite mitigation parcels pursuant to Section 106 of the National Historic Preservation Act.

As requested in your June 20, 2014 letter, following is a list of Mitigation Project ground-disturbing activities planned for the remainder of the 2014 construction season:

- Archaeological testing on the mitigation properties prior to installation of cattle exclusion fencing and trenching for water lines. This work has been underway for several months and is being conducted in concert with the CCO sub-contractor performing the site preparation work. These surveys and testing for the presence of any cultural resources are being done to remain in compliance with Section 106 of the National Historic Preservation Act and are essential to successful implementation of the Mitigation Project.
- Fencing for grazing management and cattle exclusion from wetland creation and riparian area. This work includes 39,221 meters of red brand non-tensile 12.5 gage barbed wire fence, 74 sixteen feet long metal gates, and 82 twelve feet long double gates. Sixty percent of this work has been completed. Additionally, there are 86 signs stating, "WETLAND MANAGEMENT AREA" that will be installed on the fence to demarcate the areas.
- Water supply line as part of the grazing management. This work included installation of 15,658 meters of 2 inch Schedule-40 plastic pipe, 64 stock tanks with gravel pads, and development of three wells. About 30% of this work has been completed.
- Four temporary bridges over various creeks are required for access to the mitigation parcels. One of these bridges has been completed; the other three will be constructed as soon as possible.
- Other mitigation project-related activities as required.

Note: Caltrans is proceeding with this critical mitigation work, per USACE approval in a personal communication between Chris Collison, Caltrans Senior Resource Biologist, and Sahrye Cohen, USACE Project Manager, on or about 11:30 a.m. on June 26, 2014.

Additionally, approval is requested to complete the construction of all fish passage mitigation work at Haehl and Upp Creeks. The mitigation improvements are designed to improve fish passage, channel stability, water quality, and riparian vegetation along the stream banks, in compliance with the September 11, 2006 Biological Opinion from the National Marine Fisheries Service and the June 29, 2010 Section 1602 Streambed Alteration Agreement with the California Department of Fish and Wildlife. It is necessary to resume the work on these creek improvements immediately, to reduce the potential for additional impacts related to delaying this work into the rainy season and another construction season. Caltrans and the construction contractor have already committed to increase the amount of equipment and manpower necessary to accelerate this work to ensure delivery of these improvements this year. Formal confirmation of your timely approval to resume work immediately is required, so this opportunity will not be lost.

Finally, the clear water diversion has already been initiated at bent #24 of the viaduct (at confluence of Broaddus/Baechtel/Outlet Creeks) to facilitate installation of a cofferdam; for foundation and pier column and falsework construction. Fisheries biologists captured and relocated hundreds of listed salmonids and relocated them outside the work area. This water diversion and supporting aquadams must remain in place and be maintained to prevent 'take' of Endangered Species Act listed salmonids. In order to avoid any unnecessary impacts to protected fisheries, your prompt approval to continue the mitigation work at bent #24 is required.

Issue #11: "Additional Corrective Measure #4" - Corps staff will arrange a meeting with Caltrans staff by July 15, 2014 to revise and update the MMP.

Response:

Caltrans welcomes a meeting with the USACE staff to discuss revisions and updates to the MMP prior to July 15, 2014. As requested at the March 4, 2014 meeting, Caltrans would especially welcome clarification from the USACE on the performance standards and success criteria in Chapter 9 of the MMP.

Issue #12: "Additional Corrective Measure #5" - Caltrans is required to provide an additional 5.727 acres of wetland establishment, and an additional 9.015 credits of wetland rehabilitation... You must provide a proposal for the additional compensatory mitigation or a proposal for a reduction in fill in waters of the U.S., including wetlands, by July 15, 2014.

Response:

Caltrans acknowledges that elements of the Mitigation Project work are not progressing at a pace commensurate with that of the Bypass Project on a percentage by percentage basis. However, Caltrans is doing everything within its legal, financial and logistical means as a public agency to both implement and accelerate delivery of the Mitigation Project. Successful implementation of biological mitigation requires time, patience, nurturing and reliance on natural growing seasons and conditions, and unfortunately cannot always progress in a linear fashion like road construction activities.

Caltrans also acknowledges the USACE's requirement for additional compensatory mitigation. To come up with appropriate and suitable additional compensatory mitigation, it will be essential to meet and collaborate with USACE staff on the specifics of such mitigation, conduct follow-up investigations, and identification and preparation of a realistic proposal. Caltrans has concerns about meeting the July 15, 2014 deadline for submission of a concrete proposal, therefore respectfully requests that it meet the USACE to discuss approaches and milestones to prepare a proposal for additional mitigation. Please advise if you are amenable to this request.

Conclusion

Once again, Caltrans appreciates the opportunity to present the progress to-date and status of the Mitigation Project. While not yet progressing on both the Bypass and Mitigation Projects on an equivalent shovel by shovel basis, Caltrans has achieved crucial accomplishments by purchasing and protecting the mitigation properties over the past few years, redirecting significant funding and staff efforts to start the mitigation site preparation work last year and this year, and setting in place the mechanisms to fully deliver the Mitigation Project in the near future. As all parties are aware, there remain many issues and details to address ahead before we reach our goals and I am confident that Caltrans and the USACE can resolve them successfully.

Suspension of the Bypass construction project at this point will only harm Caltrans and the California taxpayers in the amount of potentially tens of millions of dollars in delay costs, notwithstanding the fact that – as evidenced by our agency’s substantial investments in funds, time, labor, and contractual commitments – Caltrans will ultimately meet all its current compensatory mitigation obligations and provide additional mitigation due to the delay. Continued suspension of construction of the Bypass will also soon risk leaving very significant amounts of graded and disturbed areas open for an extra wet season, rather than protected by the anticipated construction and permanent stormwater management features. This imposes a significant and unnecessary risk of unmanaged run-off and discharges during the coming rainy season, and rain events before then. Finally, losing a one year of construction schedule will impose unnecessary inconvenience on the community of Willits. It is my hope that reinstatement of this permit to allow Caltrans to proceed in good faith on both the Bypass and Mitigation Projects will be allowed forthwith.

Additionally, Caltrans respectfully requests that the pending permit modification per our May 1, 2014, application for the contractor’s Mendocino Forest Products borrow site operation be approved at the earliest opportunity. It is our understanding that the NCRWQCB has also contacted the USACE and urged them to allow use of that site, rather than the Oil Well Hill site. That borrow material is needed now for construction, and construction delays will result in some of the unfortunate results discussed above.

It is apparent that the communication between our respective agencies has broken down somewhat. It is imperative that Caltrans and the USACE institute a way to better collaborate and mutually strive to implement this very complex Mitigation Project, to the benefit of both agencies and our missions and goals. The one common goal that both agencies share is that of successful implementation of this Mitigation Project and compliance with the Department of Army Permit 1991-194740N. I am committing my team to redouble their efforts to work with your staff and get this job done.

Sincerely,



CHARLES FIELDER
District Director

Enclosures

- (1) Chapter 13 of the State MMP
- (2) August 24, 2012 email transmitting the draft Conservation Easement
- (3) Figure 7-1 of the State MMP, Mitigation Project Implementation Schedule

- c: Congressman Jared Huffman
United States Attorney, San Francisco
Jane Hicks, Chief, Regulatory Branch, USACE San Francisco District
Lt. Col. John Morrow, USACE
Melissia Scianni, U.S. Environmental Protection Agency, Region 9
Joyce Ambrosius, North-Central Coast Office, National Marine Fisheries Service
Tom Dougherty, National Marine Fisheries Service
Vince Mammano, California Division Administrator, Federal Highway Administration
Peter Southworth, Deputy Secretary and General Counsel, CalSTA
Matthias St. John, Executive Director, North Coast Regional Water Quality Control Board
Brendan Thompson, NCRWQCB
Neil Manji, Region 1 Manager, California Department of Fish & Wildlife
Curt Babcock, Environmental Program Manager, CDFW
Phil Dow, Executive Director, Mendocino Council of Governments
Malcolm Dougherty, Caltrans Director

Chapter 13 Financial Assurances

13.1 Background

Caltrans acknowledges its obligation to comply with the financial assurance requirements of the California Department of Fish and Wildlife's Section 1602 Streambed Alteration Agreement and 2081 Incidental Take Permit, and the North Coast Regional Water Quality Control Board's (NCRWQCB) Clean Water Act (CWA) Section 401 Certification. Caltrans includes with this MMP a Property Analysis Record (PAR) supporting the establishment of a non-wasting endowment to ensure that mitigation measures are adequately funded in perpetuity. The PAR includes calculations and assumptions based on a systematic and thorough process to account for the costs of foreseeable long-term mitigation monitoring and maintenance activities. Due to the high degree of uncertainty in managing the sites to performance standards demanded by this MMP, additional costs beyond traditional stewardship costs are anticipated. To account for this, an adaptive management fund, contingency fund and legal fund have been established within the long-term stewardship budget.

Mitigation costs have been calculated for actions related to the aforementioned permits. In addition, the project is required to comply with the U.S. Army Corps of Engineers' (USACE) CWA Section 404 Individual Permit No. 1991-194740N.

The compensatory mitigation proposed in this MMP is considered part of the scope of the Willits Bypass Project, and as such is being funded with the same level of obligation as the roadway construction. Funding for the construction, short- and long-term monitoring, management, and maintenance of the mitigation described in this document will originate from the Willits Bypass Project. Mitigation funding is held in the Willits Bypass Expenditure Authorization (EA) 26200 and earmarked as mitigation dollars. Although it is being managed as a separate project, the Ryan Creek Fish Passage Project will be funded as compensatory mitigation for impacts on fisheries and waters of the State resulting from the Bypass project. A separate project and EA have been established for the Ryan Creek Fish Passage Project work. This money will cover the cost of the design as well as to contribute toward the construction cost of the South Fork portion of the Ryan Creek Fish Passage Project. Caltrans also proposes to secure additional funding to construct the North Fork portion of the work.

13.2 Program Information

The Willits Bypass Project was programmed in the State Transportation Improvement Program (STIP) for start of construction in fiscal year 2009/2010, and was subsequently granted a 20-month extension by the California Transportation Commission (CTC) from July 2010 to February 2012. Commencement of critical construction activities of the Willits Bypass Project occurred in February 2013.

The California Transportation Commission is an independent public agency consisting of eleven voting members and two non-voting ex-officio members, responsible for the programming and allocating of funds for the construction of highway, passenger rail and transit improvements throughout California. The CTC allocates state funds for capital projects, consistent with the State Transportation Improvement Program (STIP), State Highway Operational Protection Program (SHOPP), Traffic Congestion Relief Program and other transportation programs. The Commission typically meets monthly except for the months of July and November, with some of those monthly meetings taken up by hearings, forums or town hall meetings. The CTC programs and allocates funds at their regularly scheduled meetings.

At its March 29, 2012, meeting, the CTC programmed the construction component of the Willits Bypass Mitigation Project for \$26.29 million, plus \$21.53 million for Right of Way. These funds are comprised of both Interregional Improvement Program (IIP) funds, as recommended to the CTC by Caltrans, and Regional Improvement Program (RIP) funds, as programmed by the Mendocino County of Governments (MCOG). Additionally, federal demonstration program funds from two separate allocations under the Transportation Equity Act for the 21st Century (TEA-21) and Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) federal surface transportation acts are included. This breakdown of program funding is detailed in the Table 13-1 below.

On May 7, 2013, the CTC approved Resolution STIP1B-1112-005 allocating \$26.29 million for construction of the Mitigation Project. The total cost programmed and allocated for the Mitigation Project is currently \$54.07 million. This cost would include purchase of the mitigation properties, mitigation construction (including the South Fork portion of the Ryan Creek Fish Passage Project), long-term monitoring, management, maintenance and reporting.

Table 13-1. Willits Bypass Mitigation Project

	Programmed Funds		
	R/W Acquisition	Construction	Total
IIP Funds	\$ 15,621,000	\$ 22,346,000	\$ 37,967,000
RIP Funds	\$ 5,909,000	\$ 3,944,000	\$ 9,853,000
Federal Demo (TEA-21)			\$ 650,000
Federal Demo (SAFETEA-LU)			\$ 5,600,000
		Total	\$ 54,070,000

13.3 Mitigation Components

13.3.1 Property Acquisition Costs

Between 2010 and 2012, Caltrans purchased a total of 2,098.22 acres on 38 parcels of land adjacent to or near the Willits Bypass for compensatory mitigation consisting of a mix of wetland, riparian and oak woodland habitats suitable for restoration, preservation and management. The properties were acquired by Caltrans in fee title for a total cost of \$14.7 million.

13.3.2 Construction Costs

The Mitigation Project was advertised to contractors on July 15, 2013, and subsequent changes (Addendums) to the project plans and special provisions were made at NCRWQCB's and CDFW's request. Project bids were opened on October 22, 2013 - three bids were received - the lowest bid of \$39.3 million substantially exceeded the Caltrans Engineer's estimate of \$13.1 million. On November 7, 2013, Caltrans rejected all bids and requested a 20-month time extension from the CTC in order to repackage the Mitigation Project contract into smaller contracts and re-advertise the contracts – that 20-month extension to August 2015 was granted at the December 11, 2013 CTC meeting.

Caltrans is repackaging the Mitigation Project into smaller contracts with the goal of attracting more competition from qualified smaller contractors. The plans for those repackaged contracts will essentially be the same as those previously provided to the resource agencies for the original Mitigation Project plans. Nevertheless, at the request of the NCRWQCB and CDFW, the repackaged plans will be shared with those agencies only and not for public review at the time of the internal Caltrans Plans and Estimates (P&E) review stage. The NCRWQCB and CDFW will provide an expedited review and any comments on those plans. The repackaged Mitigation Project contracts will follow the standard Caltrans process of advertising for bids, competing contractors submitting bids, and award/approval of contracts throughout 2015. Caltrans' contracting process provides at the time of contract award that additional supplemental "G-12" funding is established for unforeseen project cost increases. In this case, that would be equivalent to about \$2.83 million in G-12 authority.

13.3.3 Short-term Mitigation Costs

Short-term mitigation costs include the performance monitoring that will occur for five or ten years, depending on the mitigation type, and the short-term management and maintenance activities that are required in order to meet performance standards. See Chapter 8 (Mitigation Maintenance Plan), Chapter 9 (Performance Standards) and Chapter 10 (Monitoring Methodology) for detailed discussions of these activities and requirements.

The short-term performance monitoring, management and maintenance costs, currently estimated at \$9.0 million, will be funded out of Caltrans' capital outlay support budget for the project. Therefore, there should be no need to seek CTC approval of a supplemental fund vote for the needed short-term mitigation funds.

13.3.4 Long-term Mitigation Costs

Current endowment funding for initial and long-term costs associated with offsite mitigation was calculated using a combination of the Property Analysis Record (PAR) program—a tool developed by the Center for Natural Lands Management, a non-profit organization dedicated to the protection of sensitive biological resources through professional, scientific based stewardship of mitigation and conservation lands in perpetuity—and a customized Microsoft Excel spreadsheet. The PAR was initially prepared by Caltrans biologists, and later substantially modified under the expertise of the Mendocino County Resource Conservation District (land manager for the mitigation properties), with assistance by their environmental mitigation consultants, EcoLogical Solutions.

The PAR is a computerized database method that is extremely effective in helping mitigation and conservation land managers calculate the costs of land management for a specific project. The PAR helps analyze the characteristics and needs of the property from which management requirements are derived. It helps pinpoint management tasks and estimates their costs as well as the necessary administrative costs to provide the full cost of managing any property.

The PAR generates a concise report that serves as a well-substantiated basis for long-term funding, including endowments, special district fees, and other sources. The PAR was used to help develop the list of necessary tasks, resources, equipment, and unit costs. Due to the high level of long term risk in the management of the mitigation lands (e.g. location in a floodplain, potential for costly catastrophic events, climate change, rigorous long-term performance standards), the PAR calculations include costs for an adaptive management fund, a contingency fund and a legal fund. Also, unit costs were adjusted if research or experience indicated that a particular PAR unit cost estimate was not suitable for project-specific circumstances. The Microsoft Excel spreadsheet was used to reorganize, calculate, and track the tasks and costs in a more intuitive, reader-friendly style and can be found in Appendix R.

Per the requirement of CDFW's Incidental Take Permit 2081-2010-007-01, Amendment No. 1, Caltrans employed the PAR default rate for contingencies at 10% to "hedge against underestimation of the fund, unanticipated expenditures or inflation". However, higher contingency rates were used if a particular maintenance activity was considered higher risk (uncertainty in the level of effort), such as annual fence replacement, annual ditch maintenance or the cost of fuel. Moreover, Caltrans also used a more conservative reinvestment return rate of 4% (vs. the PAR default of 5%), and, per the recommendation of the MCRCD, an administration overhead rate of 26%.

The PAR also includes amounts to cover any long-term adaptive management, contingency and legal expenses, as follows.

Adaptive Management Fund. This account will be funded as a line item from the PAR, with annual contributions being made to build the account. If it is determined that adaptive management may be warranted based on the evaluation process presented in Chapter 12, money in this account may be used to fund the investigation and implement recommendations with regards to adaptive management responses. Restrictions and criteria for the withdrawal of money will be developed in conjunction with the long-term land manager (MCRCD), to ensure the account is managed as a perpetual fund. The decision to withdraw and use money from the account for this purpose will be made in consultation with the resource agencies.

Contingency Fund. This account, funded as a line item from the PAR, provides an additional funding source for physical (catastrophic) events above and beyond those anticipated in the PAR.

Restrictions and criteria for the withdrawal of money will be developed in conjunction with the long-term land manager (MCRCD), to ensure the account is managed as a perpetual fund.

Legal Fund. This account will be funded as a line item from the PAR, to aid in the event of any legal challenges involving the mitigation lands.

The current cost estimate for the long-term endowment is approximately \$17.6 million. A transfer agreement authorizing transfer of the funds to NFWF will be drafted with a goal of meeting the transfer requirements in the Section 1602 Agreement, as amended. An administrative Program Change Request (PCR) will be prepared within Caltrans at the beginning of the coming fiscal year (FY 2014/15) to secure the additional mitigation funding needed for the long-term endowment according to that schedule. Both the transfer agreement and the PCR will follow an internal Caltrans Right of Way administrative process. Therefore, there should be no need to seek CTC approval of a supplemental fund vote to secure the needed long-term mitigation funds. The endowment will be held and managed in perpetuity by the National Fish and Wildlife Foundation (NFWF), an independent 501(c)(3) non-profit organization created by Congress in 1984 to help protect and restore the nation's fish, wildlife, plants and habitats.

13.4 Mitigation Cost Breakdown

Table 13-2 lists the remaining mitigation components and their funding sources. Much has already been accomplished on the Mitigation Project. As previously noted, mitigation parcels were acquired from 2010 through 2012, and a very lengthy and multi-agency collaborative process completed to prepare the PAR. Work is currently progressing under a CCO to install off-site mitigation fencing and grazing infrastructure for the Mitigation Project. A service contract is proceeding for contracting out the off-site seed collection and plant propagation work so that plants will be available when the mitigation construction contracts come on-line. Final design work for the Ryan Creek (both North and South Forks) fish passage improvements is underway; this mitigation will occur under a separate construction contract. On-site Willits Bypass mitigation and monitoring restoration is being performed as a contract item under the Bypass construction contract. Off-site mitigation performance monitoring will be done with Caltrans resources using a combination of mitigation consultants and Caltrans staff. Recently, the NCRWQCB requested additional erosion repair mitigation be provided along South Haehl Creek to offset the temporal loss caused by a delay in the mitigation schedule – that mitigation work will be done by way of a CCO under the Willits Bypass construction contract.

Table 13-2. Willits Bypass Mitigation Project

Cost Breakdown

Mitigation Component	Cost Estimate	Funded (in part) from the CTC programmed amount	Funded (in part) from the Willits Bypass construction contract (CCO)	Additional funding needed by supplemental CTC vote
Repackaged mitigation contracts	\$35 - \$38 million	✓	✓	✓
Short-term co-operative agreement to manage & maintain 1600 grazed acres over years 1 thru 10	\$9 million	✓		
Long-term endowment (PAR)	\$17.6 million	✓		
Total	\$ 62-65 million			

This preliminary estimate (May 2014) shown in Table 13-2 is very conservative by necessity at this early stage of the mitigation implementation in order to satisfy the financial risk requirements of the regulatory and permitting process. Included in this total cost is the Engineer's estimate for the repackaged construction contracts, which is also very preliminary and will be adjusted as more mitigation contract details are developed prior to advertising for construction bids. Actual costs could prove to be substantially less if construction bids come in below the Engineer's estimate, and as on-going mitigation expenditures are better understood that may allow beneficial (to both the cost and success of the mitigation) adjustments to be made to the mitigation requirements over time.

Caltrans expects the repackaged construction contract bids to come in within budget. If not, Caltrans will need to seek supplemental funding from the CTC for construction of the Mitigation Project at that time. As previously noted, the schedule for award/approval of the repackaged mitigation contracts will occur throughout 2015.

13.5 Funding Assurance

Caltrans has repeatedly affirmed its commitment to meeting its financial requirements for the Willits Bypass Mitigation Project, as follows.

- In a February 26, 2010 letter to CDFW, Caltrans noted its obligation to fully mitigate for impacts to coho salmon and committed resources to fish passage improvements at Ryan Creek. The letter also addressed compensatory mitigation for impacts to North Coast semaphore grass, and noted the STIP programmed funds budgeted for compensatory mitigation, including property acquisition, sufficient endowments to fully fund management and maintenance in perpetuity, monitoring and reporting.
- In an August 13, 2010 letter to USACE, Caltrans documented its financial assurances, specifically enumerated and applicable to government sponsored projects under 33 CFR 332.3 (n)(2), in accord with USACE regulatory requirements. The letter noted Caltrans' expenditure of over \$8 million in mitigation property acquisition, its intent to make further property purchases for an additional \$4.7 million, and the CTC's allocation of \$30.42 million for Willits Bypass mitigation.
- In an August 18, 2010 letter to CDFW, Caltrans reiterated the information provided to USACE on August 13, 2010, and documented its responsibility for compliance with the financial assurance requirements in Section 9, Performance Security, of Incidental Take Permit No. 2081-2010-007-01.
- In an October 4, 2012 letter to USACE, Caltrans noted that all of the mitigation properties had been purchased in fee title at a cost of \$14.7 million, and outlined the estimated mitigation construction costs, short-term performance monitoring and maintenance costs, and long-term mitigation management non-wasting endowment costs. In that letter, Caltrans District 1 Director Charles Fielder stated that "In the unlikely event there are cost increases that exceed the supplemental G-12 funding, additional funds can be obtained with a CTC supplemental vote".
- In a February 7, 2013 letter to USACE, Caltrans confirmed that the CTC had programmed \$47.82 million for the capital phase of the Willits Bypass Mitigation Project, as well as an additional \$6.25 million of federal demo funds for a total of \$54.07 million. The letter also noted that the programmed funds are reserved strictly for the Mitigation Project only, and that they would not be used for cost overruns on the freeway project or any other work other than the Mitigation Project. That letter

provided financial assurances in compliance with Special Condition 3 of USACE Permit No. 11991-194740N. In that letter, Caltrans District 1 Director Charles Fielder added the reminder that “Caltrans is a government agency that is ‘here to stay’ and is committed to constructing the mitigation project”.

These five letters of financial assurance and this MMP strongly convey the message that Caltrans understands its financial responsibilities and legal requirements for permit compliance, is committed to fulfilling its mitigation requirements, and is actively engaged in implementing the mitigation for the Willits Bypass project. As a responsible public agency that is “here to stay”, Caltrans remains committed to returning to the CTC to seek a supplemental vote as needed and at the appropriate time.

"Monarres, Laurie, SPN" <Laurie.A.Monarres@usace.army.mil>
08/28/2012 02:07 PM

Classification: UNCLASSIFIED
Caveats: NONE

Hi Carolyn,

I am in receipt of the files as well. I'll let you know if I have any comments or questions.

Thanks,
Laurie

Craig Martz <CMARTZ@dfg.ca.gov>
08/27/2012 05:09 PM

Thanks, Carolyn. I received all of the files you sent on Friday. I probably won't be able to start looking them over until next week-- I'm still wrapping up my review of the MMP....

Carolyn Brown/D03/Caltrans/CAGov
08/24/2012 02:16 PM

To CMARTZ@dfg.ca.gov, laurie.a.monarres@usace.army.mil
Cc Dave Kelley/D03/Caltrans/CAGov@DOT, Ken Lastufka/D03/Caltrans/CAGov@DOT, Chris Collison/D03/Caltrans/CAGov@DOT
Subject Conservation Easement Package for Willits Mitigation Properties

Good Afternoon Craig and Laurie,

Pursuant to Condition 5 of our Willits 404 permit, attached please find a draft Conservation Easement package for our Willits mitigation properties for your review/comment. The CE template was provided by DFG. We have attempted to utilize the DFG template as much as possible, but as you will see, we have made some changes. Please use track changes to capture any changes/comments your departments have. If you would like me to also send you a hard copy, please let me know and I will get this in the mail to you.

Please confirm your receipt of this information, so that I know everything was "delivered".

Have a great weekend!

Thanks,
Carolyn



Exhibit E-CompleteListOfEncumbrances_20120820.pdf



Draft 1_CE.doc



Exhibit C_APN_List_for_Cons_Esmt-vers2.pdf



EXHIBIT_A_Mitigation_Parcel_descriptions-vers2.pdf



Exhibit_B.doc

Notes for Agencies:

1) If you require Exhibits C and D (the January and June Mitigation and Monitoring plans) please contact Shanna Zahner at following e-mail address Shanna_Zahner@dot.ca.gov

2) Exhibit C (the list of APNs) serves as a "cross walk" between new and old APNs, and is THE reference for APNs in our submittals.

3) Caltrans is reviewing the listed encumbrances to confirm that they are still in effect, understand exactly what they mean, and evaluate the possibility of modifying or maybe even eliminating some of them.

Contract No./CCO	Location and Task	2014	2015	2016	2017	2018	2019	2020
Arkelian Offsite Mitigation Parcel								
CCO	North Coast semaphore grass rehabilitation	█	→					
1,2,3	Wetland rehabilitation			█	█	█	→	
Benbow Offsite Mitigation Parcels								
CCO	Baker's meadowfoam rehabilitation	█	→					
4	Wetland establishment		█	█	█	→		
1,2,3	Wetland rehabilitation			█	█	█	→	
CCO	Riparian rehabilitation	█	→					
4	Other waters rehabilitation		█	█	█	→		
Brooke Offsite Mitigation Parcels								
1,2,3	Wetland rehabilitation			█	█	█	→	
4	Riparian establishment		█	█	█	→		
4	Riparian rehabilitation	█			→			
4	Oak Woodland Establishment		█	█	█	→		
Ford Offsite Mitigation Parcels								
CCO	Baker's meadowfoam rehabilitation	█	→					
4	Wetland establishment		█	█	█	→		
1,2,3	Wetland rehabilitation			█	█	█	→	
4	Riparian establishment		█	█	█	→		
CCO	Riparian rehabilitation	█	→					
4	Other waters rehabilitation		█	█	█	→		
Frost Offsite Mitigation Parcel								
CCO	North Coast semaphore grass rehabilitation	█	→					
CCO	Baker's meadowfoam rehabilitation	█	→					
1,2,3	Wetland rehabilitation			█	█	█	→	
4	Other waters rehabilitation		█	█	█	→		
Huff Offsite Mitigation Parcel								
CCO	Wetland preservation	█	→					
CCO	Other waters preservation	█	→					
Huffman Offsite Mitigation Parcel								
	North Coast semaphore grass establishment	→						
Goss/MGC Plasma North and Middle Offsite Mitigation Parcels								
CCO	North Coast semaphore grass rehabilitation	█	→					
CCO	Baker's meadowfoam rehabilitation	█	→					
4	Wetland establishment		█	█	█	→		
1,2,3	Wetland rehabilitation			█	█	█	→	

Figure 7-1. Mitigation Implementation Schedule

Contract No./CCO	Location and Task	2014	2015	2016	2017	2018	2019	2020
Lusher Offsite Mitigation Parcels								
CCO	North Coast semaphore grass rehabilitation	█	→					
CCO	Baker's meadowfoam rehabilitation	█	→					
4	Wetland establishment		█	█	█	→		
1,2,3	Wetland rehabilitation			█	█	█	→	
4	Riparian establishment		█	█	█	→		
CCO	Riparian rehabilitation	█	→					
4	Other waters rehabilitation		█	█	█	→		
Nance Offsite Mitigation Parcel								
CCO	Baker's meadowfoam rehabilitation	█	→					
1,2,3	Wetland rehabilitation			█	█	█	→	
4	Riparian establishment		█	█	█	→		
CCO	Riparian rehabilitation	█	→					
4	Other waters rehabilitation		█	█	█	→		
Niesen Offsite Mitigation Parcel								
CCO	Baker's meadowfoam rehabilitation	█	→					
4	Wetland establishment		█	█	█	→		
1,2,3	Wetland rehabilitation			█	█	█	→	
Taylor Offsite Mitigation Parcels								
CCO	Oak woodland preservation	█	→					
CCO	Oak woodland grassland preservation	█	→					
Watson Offsite Mitigation Parcels								
CCO	Baker's meadowfoam rehabilitation	█	→					
4	Wetland establishment		█	█	█	→		
1,2,3	Wetland rehabilitation			█	█	█	→	
4	Other waters rehabilitation		█	█	█	→		
4	Oak woodland establishment		█	█	█	→		
Wildlands Offsite Mitigation Parcels								
CCO	Baker's meadowfoam rehabilitation	█	→					
4	Wetland establishment		█	█	█	→		
1,2,3	Wetland rehabilitation			█	█	█	→	
4	Riparian establishment		█	█	█	→		
CCO	Riparian rehabilitation	█	→					
4	Other waters rehabilitation		█	█	█	→		

Legend: Contract No.= Mitigation Contract No. 1, 2, 3 or 4 and CCO=Willits Bypass contract change order

█	Seed and Plant Propagation/Site Preparation and Planting	→	Performance Monitoring = 5 to 10 years
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Figure 7-1. Mitigation Implementation Schedule

