

APPENDIX C

Agency Participation and Consultation

Recipients of Participating Agency Letter

Jacqueline Wyland	Environmental Protection Agency, Region 9
	California Department of Conservation
	California Regional Water Quality Control Board
Gunther Moskat	California Department of Toxic Substance Control
	California Department of Conservation, Division of Mines and Geology
	Bay Area Rapid Transit, Real Estate Dept.
Craig Goldblatt	Metropolitan Transportation Commission
	Contra Costa County Health Department, Environmental Division
Barney Opton	U.S. Army Corps of Engineers
Robert Nagel	AMTRAK
	California Department of Transportation, District 4
	California Department of Transportation, Division of Rail
Carl Wilcox	California Department of Fish & Game
	California State Native American Heritage Commission
	California State Lands Commission
Paul Maxwell	Contra Costa Transportation Authority
	Bay Area Air Quality Management District
	Contra Costa Joint Powers Authority
Janet McBride	Association of Bay Area Governments
Don Hankins	U.S. Fish & Wildlife Service
	California Governor's Office of Planning & Research
	California Office of Historic Preservation
	Contra Costa County Flood Control and Water Conservation Dist.
Jim Townsend	East Bay Regional Park District
	Contra Costa County Community Development Department
Charlie Anderson	Western Contra Costa Transit Authority
	Federal Aviation Administration
	National Oceanic and Atmospheric Administration, Fisheries Service
	U.S. Coast Guard
	U.S. Department of Homeland Security – Transit Security Agency

	California Public Utilities Commission
	West Contra Costa Unified School District
	Contra Costa Water District

Agency Letter of Invitation

Sample Letter of Invitation



[Insert Date]

[Insert Agency Representative]
[Insert Agency Name and Address]

Re: Invitation to Participate in the Environmental Review
Process for the Hercules Intermodal Transit Center
Project

Dear *[Agency Representative]*:

The City of Hercules, in cooperation with the Federal Transit Administration (FTA), is initiating the preparation of a joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the proposed Hercules Intermodal Transit Center Project. The proposed project is described in the attached Notice of Intent. The purpose of the project, as currently defined, is to increase local and regional mobility and transportation options by providing new and expanded transit services with intermodal connections that will encourage use of public transit. The enclosed scoping information packet provides more details. A preliminary coordination plan and schedule are also enclosed.

Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users establishes an enhanced environmental review process for certain FTA projects, increasing the transparency of the process, as well as opportunities for participation. The requirements of section 6002 apply to the project that is the subject of this memorandum. As part of the environmental review process for this project, the lead agencies must identify, as early as practicable, any other Federal and non-Federal agencies that may have an interest in the project, and invite such agencies to become participating agencies in the environmental review process.¹ Your agency has been identified preliminarily as one that may have an interest in this project, accordingly, you are being extended this invitation to become actively involved as a participating agency in the environmental review process for the project.

As a participating agency, you will be afforded the opportunity, together with the public, to be involved in defining the purpose of and need for the project, as well as in determining the range of alternatives to be considered for the project. In addition, you will be asked to:

- Provide input on the impact assessment methodologies and level of detail in your agency's area of expertise;

¹ Designation as a "participation agency" does not imply that the participating agency supports the proposed project or has any jurisdiction over, or special expertise concerning the proposed project or its potential impacts. A "participating agency" differs from a "cooperating agency," which is defined in regulations implementing the National Environmental Policy Act as "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment." [40 C.F.R. § 1508.5](#).

- Participate in coordination meetings, conference calls, and joint field reviews, as appropriate; and
- Review and comment on sections of the pre-draft or pre-final environmental documents to communicate any concerns of your agency on the adequacy of the document, the alternatives considered, and the anticipated impacts and mitigation.

Your agency does not have to accept this invitation. If, however, your agency is a Federal agency, and you elect not to become a participating agency, you must decline this invitation in writing, indicating that your agency has no jurisdiction or authority with respect to the project, no expertise or information relevant to the project, and does not intend to submit comments on the project. The declination may be transmitted electronically to Lisa Hammon [LHammon@ci.hercules.ca.us]; please include the title of the official responding. In order to give Federal agencies adequate opportunity to weigh the relevance of their participation in this environmental review process, written responses to this invitation are not due until after the close of the scoping process, now scheduled to conclude *December 30, 2009*. Written responses from Federal agencies declining designation as participating agencies should be transmitted to this office not later than January 15, 2010.

If you have questions regarding this invitation, please contact Lisa Hammon at (510) 799-8251.

Sincerely,

Attachments: Scoping Information
Draft Coordination Plan

cc: *Federal Transit Administration*

Interagency Meeting

**HERCULES INTERMODAL TRANSIT CENTER PROJECT
HERCULES, CALIFORNIA
USACE INTERAGENCY MEETING
NOVEMBER 18, 2009
1:00 – 2:00 PM
USACE Regulatory No. 2008-00382S
MEETING SUMMARY**

PARTICIPANTS

- Jesse Harder – City of Hercules
- David McCrossan – HDR
- Serge Stanich – HDR
- William Silva – d’Oro Construction Management
- Ian Liffman – USACE
- Katarina Galacatos – USACE
- Jason Brush – USEPA
- Katie Hart – SFRWQCB
- Sandi Potter – SFRWQCB
- Paul Page – FTA (via telephone)
- Ben Solveski – USFWS (via telephone)

SUMMARY

The meeting began late due to technical difficulties with conference telephone. Serge Stanich started the meeting with a PowerPoint presentation of the proposed project (see agenda).

Following the presentation, Katarina Galacatos and Jason Brush initiated the conversation by inquiring if the FTA would be the lead federal agency for the purposes of compliance with National Environmental Policy Act (NEPA). HDR confirmed that FTA would be the lead with respect to federal compliance for NEPA, as well as coordination with the US Fish and Wildlife Service (USFWS), for Section 7 of the Endangered Species Act (ESA) and with State Historic Preservation Office (SHPO) for compliance with Section 106 of the National Historic Preservation Act (NHPA).

Ms. Galacatos further expressed concerns that by separating the development and environmental review of the Hercules Intermodal Transit Center (HITC) from the future ferry terminal proposed by the San Francisco Bay Area Water Emergency Transportation Authority (WETA) results in

*Hercules Intermodal Transit Center
HDR Engineering, Inc.*

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*USACE Interagency Meeting
November 18, 2009*

piecemealing the project. Mr. Brush acknowledged that the two projects may have separate utility which would allow for the separate documents. However, he also noted that as the transit center would provide bus and rail service, it is not a water dependent project. Consequently, Mr. Brush inquired what alternative locations have been investigated that would provide for lesser environmentally damaging effects. Mr. Brush and Ms. Galacatos further added that their concerns regarding the perceived segmenting of the projects is that locating the transit center before the ferry service is analyzed dictates the ultimate location of the ferry and would limit the potential for alternatives. The project team discussed work that had been completed to date and the environmental analysis that included the point and locations closer to Rodeo. However, the team also identified the limitations to safety and track geometry and that the proposed center platform must be located on a portion of track that is straight. No other locations provide for sufficient track length without also being situated on a curve of the track. Mr. Brush clarified that his inquiries were a matter of procedural documentation required both for satisfying NEPA as well as the CWA Section 404 (b)(1) Guidelines for the disposal of fill. Mr. Brush noted that the location of the facility may be appropriate; however, the document should address and include adequate analysis of alternative locations.

While discussing the effects of the project on aquatic resources, the USACE and EPA also discussed the realignment and restoration of Refugio Creek. Using recent photographs of the site, Serge Stanich explained the proposed restoration of Refugio Creek to include realignment to straighten two 90-degree turns of the creek prior to its crossing under the rail road tracks through three 72-inch culverts. Additionally, an historic culvert and fill crossing, sandbags along the banks, and concrete fill would be removed. The channel would be realigned to include greater diversity with meanders and adjacent wetlands. Under existing conditions, localized flooding occurs during peak events at the current UP crossing. Mr. Brush inquired as to the restoration work that had been completed upstream and what permits had been secured to complete the work. The San Francisco Regional Water Quality Control Board (SFRWQCB) commented that the work had been completed as mitigation for development work in the area. Mr. Brush clarified his concerns stating that including the restoration work for Refugio Creek with the project development may restrict the alternatives for restoring the creek and the available permitting options. Mr. Brush indicated that EPA's preference would be to separate the restoration of the creek from the development of the project so that that the "needs of the creek" could be explored and addressed without influence of the "needs of the development." Jesse Harder explained that the extension of John Muir Parkway will require a crossing of the Northern Channel and the installation of an outfall at Refugio Creek. With the civil improvements that would affect Refugio Creek, restoration and realignment activities of Refugio Creek seemed most prudent to be included under one comprehensive plan.

Conversation at the meeting returned regularly to how the different projects related to each other. Agencies requested additional clarification regarding the development of the HITC and the

future ferry terminal, particularly with respect to the construction of the third platform that will cross over the tracks and may result in fill to the bay and to wetland features. The HDR design team explained that ferry service has been identified as a reasonably foreseeable future project and that the location had been set by WETA. Additionally, to satisfy safety code restriction established by Union Pacific, the California Public Utilities Commission (CPUC), as well as local fire safety code a third access and egress was required. Additionally, the design team is currently evaluating specific location and design alternatives that would further avoid and minimize placement of fill into the bay.

Serge Stanich discussed the potential for the project to affect species listed as threatened or endangered under the state and federal ESA, particularly the salt marsh harvest mouse, clapper rail and black rail. Ben Solveski of the USFWS commented that he did not believe these species were likely present due to the lack of viable habitat but commented that he was most concerned about California red-legged frog (CRLF). Serge Stanich then explained that CLRF was known to exist approximately 1 mile upstream in Refugio Creek on the other side of Interstate 80. However site conditions at the HITC were likely too saline due to the proximity to the bay. Mr. Stanich also noted that while the FTA would be the lead in initiating consultation with the USFWS, the FTA has also indicated that it would allow either the City of Hercules or HDR to act as the official designee in coordinating with the USFWS. Paul Page of the FTA confirmed this statement.

Staff at the SFRWQCB commented that as a responsible agency, the SFRWQCB would make every effort to comment on the EIR/EIS during the public comment period; however, agency staff is overextended and may not be able to do so. SFRWQCB also commented that they would have permitting authority over the project on the disposal of fill as well as stormwater compliance. Serge Stanich responded that the City of Hercules has a municipal stormwater permit and that new municipal stormwater facilities would be consistent with current permitting requirements. Additionally, the project would also require compliance with the State of California's Construction Stormwater Permit and a Storm Water Pollution Prevention Plan would be prepared for the project.

Serge Stanich closed the presentation with a discussion of affected resources of concern to regulatory agencies present, particularly USACE. Wetland delineation and special status species surveys have been completed by a number of consulting firms including Vollmar Consulting, Wetlands and Water Resources, Inc. and WRA. Currently, HDR is compiling all existing environmental documentation and identifying data gaps. Ian Liffman identified himself as the individual at the USACE who verified the Vollmar delineation and he would also be the primary contact for the permitting of the project. Ben Solveski of the USFWS also identified himself as the primary contact for the USFWS.

ACTION ITEMS FROM MEETING

- Expand discussion of alternatives for the proposed project and identify previous environmental documentation completed for tiering.
- Review project description to ensure clear distinction between HITC, Bayfront Development, and Ferry Terminal.
- Coordinate with the USACE to obtain wetland delineation data and/or finalize jurisdictional determination. Develop impact analysis with quantities.
- Confirm needs of bayside platform (ferry, fire code, and public access) and analyze alternatives.
- Coordinate with the USFWS to incorporate technical assistance on development of biological assessment.

Agency Consultation

Agency	Name	Method	Date	Topic
See interagency meeting summary above.		Meeting	11/18/2009	Introduce project to agencies; discussion potential issues and coordination
USFWS	Ryan Olah	E-mail	11/18/2009	USFWS authorized wet season surveys for the project
USFWS	Ben Solvesky	Verbal	12/7/2009	Authorization from USFWS to commence federally listed branchiopod surveys, once access permission was granted
NMFS	Gary Stern	Telephone	2/9/2010	Discussed proposed project and proposed conservation and mitigation measures
BCDC	Bob Batha Ming Yeung	Telephone	3/18/2010	Discussed permitting and coordination processes
USFWS	Ben Solvesky	E-mail	4/8/2010	USFWS received California red-legged frog site assessment report
NMFS	Korie Schaeffer	Telephone	4/12/2010	Discussed the need for eelgrass surveys and impacts to intertidal habitat
USFWS	Ben Solvesky Stephanie Jentsch	Site Visit	4/27/2010	Discussed and toured proposed project site with USFWS
USFWS	Stephanie Jentsch	E-mail	5/6/2010	USFWS sent e-mail allowing discontinuation of federally listed branchiopod surveys
USFWS	Stephanie Jentsch	E-mail	5/20/2010	USFWS received brief meeting summary of 4/27/2010 field site visit
USACE	Ian Liffmann	E-mail	6/24/2010	Comments on Administrative Draft EIR/EIS
USFWS	Chris Nagano	Letter	7/23/2010	Technical assistance