Tacoma/Pierce County HOV Program

Finding of No Significant Impact

Errata for July 2009 Supplemental Environmental Assessment

I-5: M Street to Portland Avenue – HOV
I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV
I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV

January 2010

Washington State Department of Transportation

U.S. Department of Transportation
Federal Highway Administration

Tacoma/Pierce County HOV Program

I-5: M Street to Portland Avenue – HOV
I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV
I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV

Finding of No Significant Impact

By the

U.S. Department of Transportation

Federal Highway Administration

The Federal Highway Administration (FHWA) has determined, in accordance with 23 CFR 771.121, that the proposed project will have no significant impact on the environment.

This Finding of No Significant Impact (FONSI) is based on the Environmental Assessment (EA) [incorporated by reference] and other documents and attachments, as itemized in this FONSI. These documents have been independently evaluated by the FHWA and are determined to accurately discuss the project purpose, need, environmental issues, impacts of the proposed project, and appropriate mitigation measures. The review provided sufficient evidence and analysis for determining that an environmental impact statement (EIS) is not required.

The FHWA takes full responsibility for the accuracy, scope, and content of the EA, as modified by this FONSI and the referenced documents.

7 Jan., 2010
Date of Approval

Dean Moberg, P.E.
Federal Highway Administration
Olympic & SW Region Area Engineer

Title VI

WSDOT ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For questions regarding WSDOT's Title VI Program, you may contact the Department's Title VI Coordinator at (360) 705-7098.

Americans with Disabilities Act (ADA) Information

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A Federal agency may publish a notice in the Federal Register, pursuant to 23 USC §139(l), indicating that one or more federal agencies have taken final action on permits, licenses, or approvals for a transportation project. If such notice is published, claims seeking judicial review of those federal agency actions will be barred unless such claims are filed within 180 days after the date of publication of the notice, or within such shorter time period as is specified in the federal laws pursuant to which judicial review of the federal agency action is allowed. If no notice is published, then the periods of time that otherwise are provided by the Federal laws governing such claims will apply.

Contents

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Exhibits

Abbreviations and Acronyms

AASHTO	American Association of State Highway and Transportation Officials
APE	Area of Potential Effects
BMP	best management practice
CD	compact disc
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
dBA	A-weighted decibels
dBC	C-weighted decibels
EA	environmental assessment
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
GIS	geographic information system
GMA	Growth Management Act
HOV	high-occupancy vehicle
I-5	Interstate 5
I-705	Interstate 705
LOS	level of service
MP	milepost
mph	miles per hour

NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
NTU	nephelometric turbidity units
PCBs	polychlorinated biphenyls
PM_{10}	particulate matter with a diameter less than 10 microns
PSRC	Puget Sound Regional Council
RCW	Revised Code of Washington
RM	river mile
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SIP	State Implementation Plan
SR	state route
USC	United States Code
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
WAC	Washington Administrative Code
VMT	vehicle miles traveled
WRIA	water resource inventory area
WSDOT	Washington State Department of Transportation

1. Description of Proposed Action

The Federal Highway Administration (FHWA) and the Washington State Department of Transportation (WSDOT) issued a supplemental Environmental Assessment (EA) on July 31, 2009, for three projects on Interstate 5 (I-5) in the Tacoma/Pierce County High-Occupancy Vehicle (HOV) Program: I-5: M Street to Portland Avenue – HOV; I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV; and I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV. The projects would improve traffic flow and increase traffic safety by designing and constructing southbound and northbound HOV lanes on I-5, improving ramp alignments, and adding auxiliary lanes (Exhibit 1).

The proposed projects include the following improvements (see Exhibits 2 through 4):

1.1. I-5: M Street to Portland Avenue – HOV

This project would accomplish the following:

- Reconstruction of main line I-5 northbound and southbound, including additional HOV lanes
- Reconstruction of on- and off-ramps at the northbound and southbound I-5/I-705/SR 7 interchange
- Demolition of existing bridges and reconstruction of new bridges at Pacific Avenue, McKinley Way, and East L Street
- Reconstruction of city street approaches to the Pacific Avenue Bridge, McKinley Way Bridge, and L Street Bridge
- Construction of a new bridge on a new northbound I-5 alignment over I-705. The existing northbound bridge will be retrofitted for HOV lanes.
- Construction of retaining walls
- Upgrades to signing, illumination, storm water collection facilities, and water quality treatment facilities; and resurfacing and reconstruction of main line I-5

1.2. I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV

This project would accomplish the following:

- Reconstruction of a portion of Portland Avenue under main line I-5 overcrossing
- Widening and seismic retrofit of I-5 bridges over East Portland Avenue and East Bay Street
- Reconstruction of East Bay Street from East 27th Street to East 28th Street from a one-way roadway to a two-way roadway
- Reconstruction of East 28th Street from Portland Avenue to Bay Street/northbound I-5 on-ramp
- Construction of a new ramp metering system at the East 28th Street on-ramp to northbound I-5
- Reconstruction of East 27th Street from the Puyallup River Bridge off-ramp to the southbound I-5 on-ramp
- Reconstruction of and improvements to the existing northbound I-5 on- and off-ramps in the vicinity of East Bay Street and northbound SR 167
- Removal and reconstruction of main line I-5 and northbound on- and off-ramp bridges over T Street utilities
- Construction of a temporary work bridge over Puyallup River
- Construction of a new northbound I-5 bridge over the Puyallup River, the railroad, and SR 167
- Construction of new retaining walls
- Realignment of 20th Street East in Fife
- Widening of northbound mainline I-5 to accommodate an HOV lane
- Widening a portion of southbound main line I-5 east of Port of Tacoma Road to accommodate HOV lanes
- Reconstruction of and improvements to the signal systems at multiple intersections

I-5: M Street to Portland Avenue - HOV
Start Project
I-5 MP 132.88

I-5: M Street to Portland Avenue - HOV
End Project
I-5 MP 134.91

I-5: M Street to Portland Avenue - HOV
End Mainline Improvements
I-5 MP 134.89

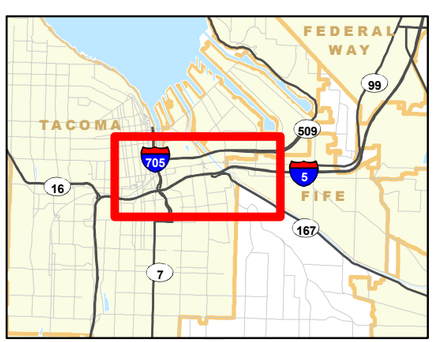
I-5: Portland Avenue to Port of Tacoma Road - Northbound HOV
Start Project
I-5 MP 134.88

I-5: Portland Avenue to Port of Tacoma Road - Southbound HOV
Start Project
I-5 MP 134.93

I-5: Portland Avenue to Port of Tacoma Road - Southbound HOV
Start Mainline Improvements
I-5 MP 135.07

I-5: Portland Avenue to Port of Tacoma Road - Southbound HOV
End Project
I-5 MP 136.61

I-5: Portland Avenue to Port of Tacoma Road - Northbound HOV
End Project
I-5 MP 136.61



- Existing WSDOT Right of Way
- I-5: M Street to Portland Avenue - HOV
- I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV
- I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV
- Stream
- Unincorporated Area
- City Limits

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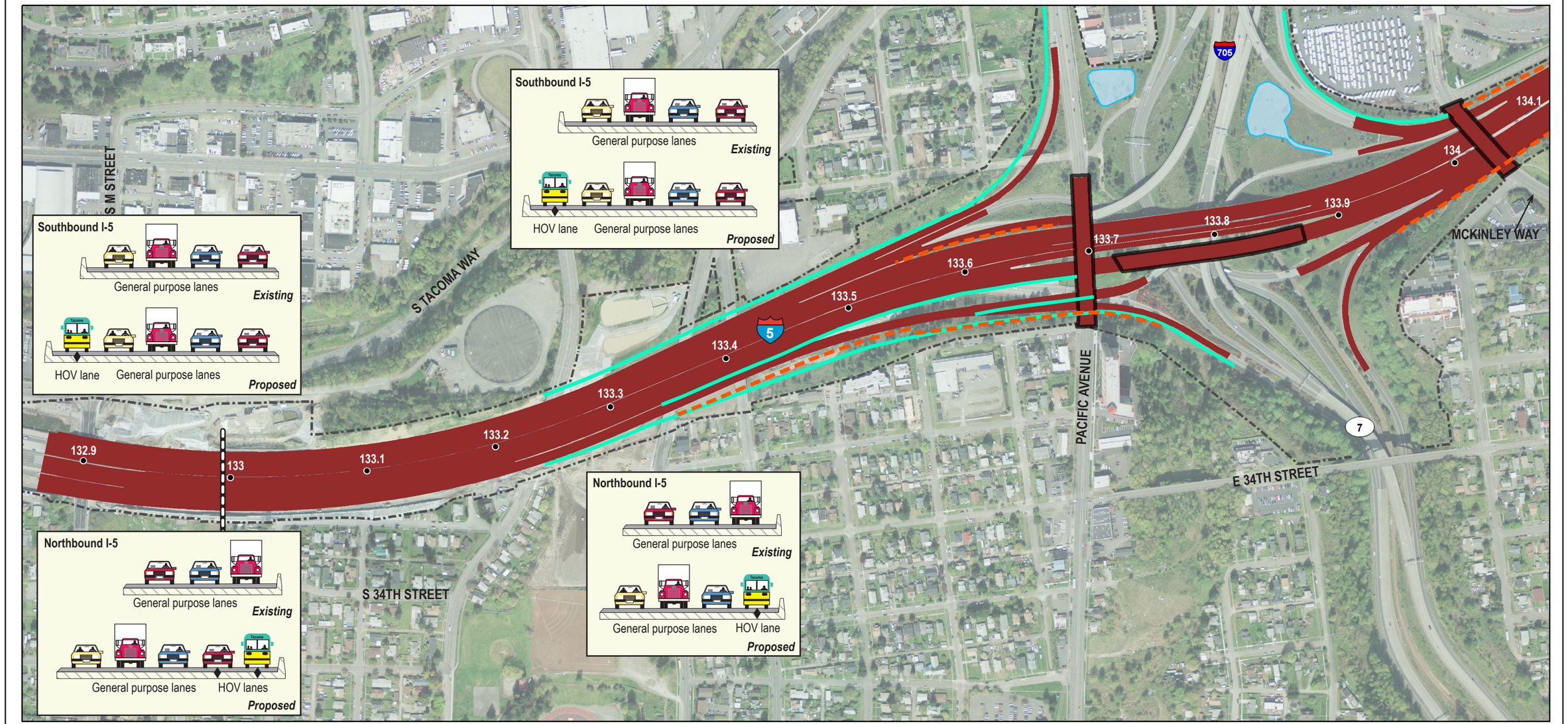
Source: Pierce County (2007) GIS Data (Streets). Horizontal datum for all layers is NAD83(91), vertical datum for layers is NAVD88.

EXHIBIT 1
Approximate Extent of Projects Evaluated in the Supplemental Environmental Assessment

Tacoma/Pierce County HOV Program

Washington State Department of Transportation

File Path: \\simba\proj\WSDOT\341541\GIS\MapDocuments\Environmental\ProjectDescriptions\TAC\TAC_ProjectLimitsNewLimit.mxd, Date: April 10, 2009



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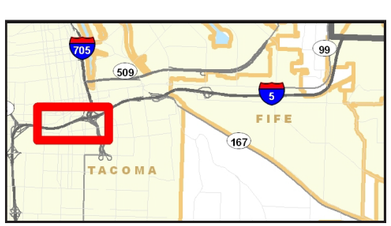


- Milepost
- Existing WSDOT Right of Way
- Change in Lane Configuration
- Proposed Retaining Wall
- Proposed Media Filter Drain
- Proposed Bridge and Ramp Work
- Proposed Wet/Detention Pond
- I-5: M Street to Portland Avenue - HOV

The primary construction activities as shown on this exhibit are part of the I-5: M Street to Portland Avenue-HOV Lanes Project:

- Construct new northbound and southbound I-5 alignments, including additional HOV lanes
- Reconstruct on-and off-ramps at northbound and southbound I-5/I-705/SR 7 interchange
- Demolish existing bridges and reconstruct new bridges at Pacific Avenue and McKinley Way. Reconstruct City of Tacoma street approaches to the bridges
- Construct a new bridge on the new northbound I-5 alignment over I-705 and retrofit the existing northbound bridge for HOV lanes
- Construct retaining walls
- Upgrade signing, illumination, stormwater collection facilities and water quality treatment facilities, and rehabilitate I-5 mainline pavement

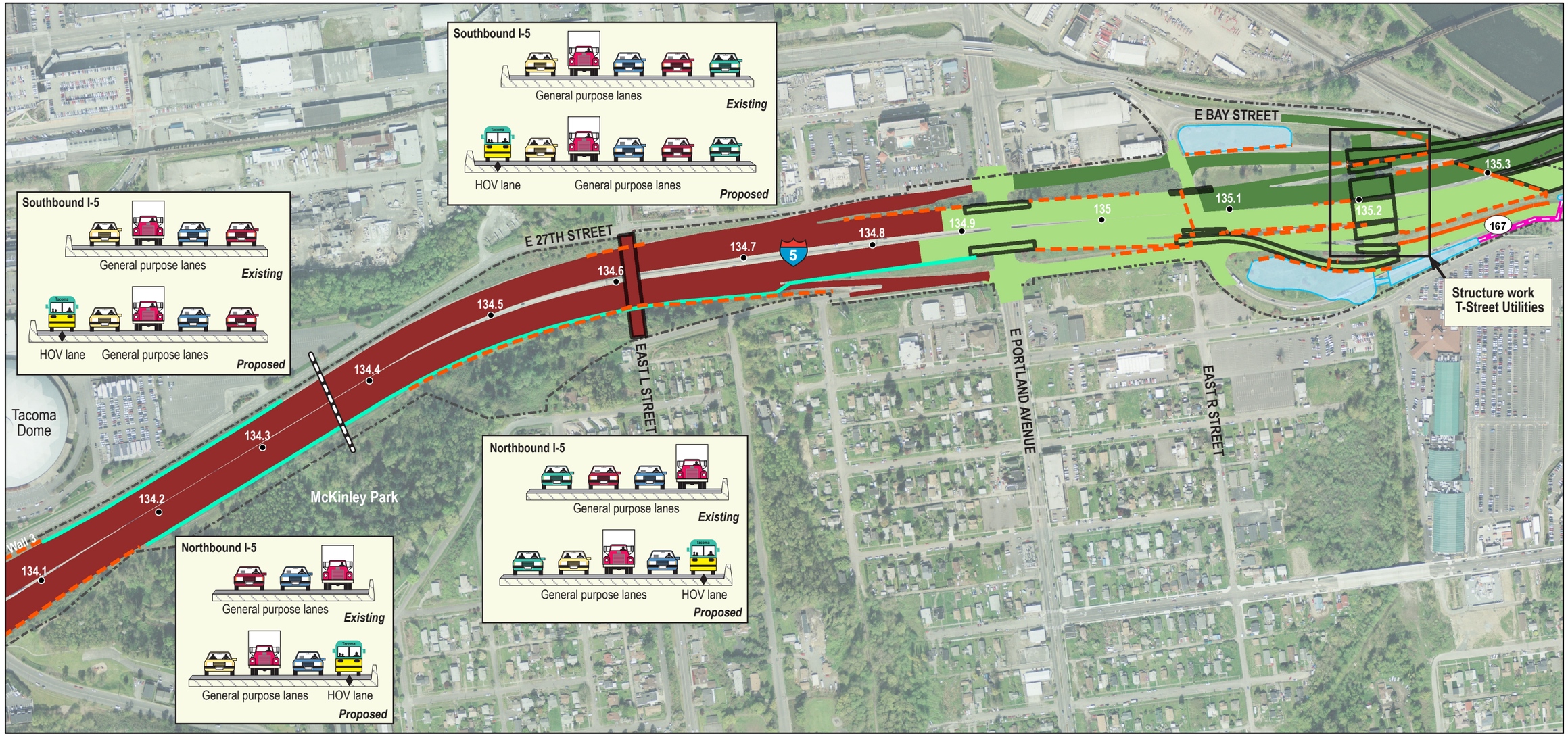
Source: Aerial photos WSDOT (2007) and USGS (2005). All other data from Pierce County

EXHIBIT 2
Primary Project Components from Approximately Milepost 132.9 to Approximately Milepost 134.1

Tacoma/Pierce County HOV Program

Washington State Department of Transportation

graphics/11-18-08/rtb-HEC-R/06-03300-009/Supplemental EA



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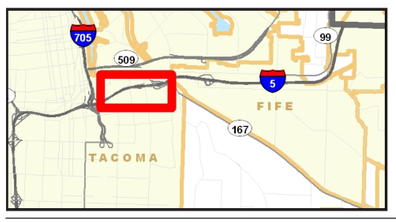


- Milepost
- Existing WSDOT Right of Way
- Change in Lane Configuration
- Proposed Retaining Wall
- Proposed Media Filter Drain
- Proposed Storm Drain
- Proposed Bridge and Ramp Work
- Proposed Wet/Detention Pond
- I-5: M Street to Portland Avenue - HOV
- I-5: Portland Avenue to Port of Tacoma Road - Northbound HOV
- I-5: Portland Avenue to Port of Tacoma Road - Southbound HOV
- Potential Local Improvements by WSDOT

The primary construction activities as shown on this exhibit are a combination of all three projects.

Activities for all three projects:

- Construct new northbound and southbound I-5 alignments, including additional HOV lanes
- Upgrade signing illumination, stormwater collection facilities, water quality treatment facilities, and rehabilitate I-5 mainline pavement Construct Retaining Walls

Activities for I-5: M Street to Portland Avenue-HOV Lanes:

- Demolish the existing bridge and reconstruct a new bridge at L Street.
- Reconstruct City of Tacoma street approaches to the bridge

Activities for I-5: Southbound Puyallup River Bridge Replacement:

- Widen southbound I-5 to accommodate HOV Lanes
- Realign and reconstruct a new I-5 southbound off-ramp to East 27th Street
- Reconstruct East 27th Street from the I-5 southbound off-ramp to the southbound I-5 on-ram
- Reconstruct city street approaches to East Portland Avenue and East R Street to accommodate change in grade
- Remove and reconstruct southbound on and off ramps crossing T Street utilities

Activities for I-5: Northbound Puyallup River Bridge Replacement:

- Widen northbound main line I-5 to accommodate HOV lanes
- Reconstruct a portion of East Portland Avenue under mainline I-5 overcrossing
- Widen and seismic retrofit of I-5 bridges over East Portland Avenue and East Bay Street
- Reconstruct East Bay Street from E. 27th Street to East 28th Street from a one-way roadway to a two-way roadway
- Reconstruct East 28th Street from Portland Avenue to East Bay Street/northbound I-5 on-ramp
- Reconstruct East 27th Street from the Puyallup River Bridge off-ramp to the I-5 southbound off-ramp
- Reconstruct and improve existing northbound I-5 on-an-off ramps in the vicinity of East Bay Street and northbound SR-167
- Remove and reconstruct I-5 mainline and northbound on-ramp and off-ramp bridges that cross over T Street utilities
- Relocate a 16" high pressure gas main
- Reconstruct and improve signal systems at multiple intersections
- Construct new ramp metering system at the 28th Street on-ramp to northbound I-5

Source: Aerial photos WSDOT (2007) and USGS (2005). All other data from Pierce County

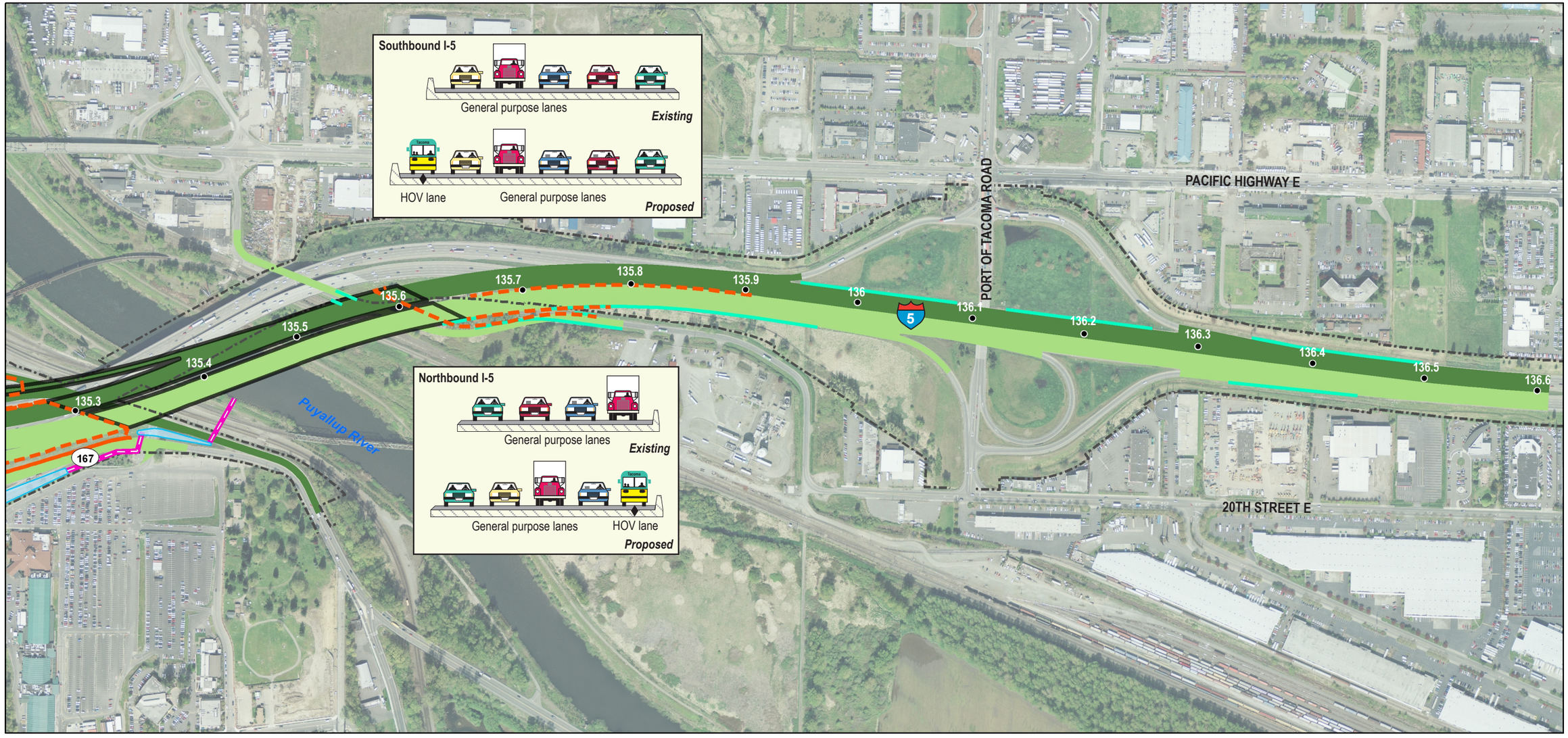
EXHIBIT 3

Primary Project Components from Approximately Milepost 134.1 to Approximately Milepost 135.3

Tacoma/Pierce County HOV Program

Washington State Department of Transportation

graphics/11-18-08/rtb-HEC-R/06-03300-009/Supplemental EA



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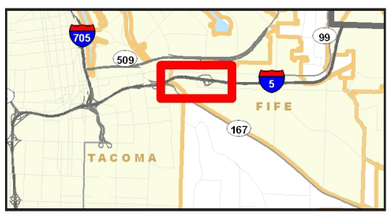

- Milepost
- Existing WSDOT Right of Way
- Change in Lane Configuration
- Proposed Retaining Wall
- Proposed Media Filter Drain
- Proposed Storm Drain
- Proposed Bridge and Ramp Work
- Proposed Wet/Detention Pond
- I-5: Portland Avenue to Port of Tacoma Road - Northbound HOV
- I-5: Portland Avenue to Port of Tacoma Road - Southbound HOV

The primary construction activities as shown on this exhibit include the I-5: Southbound Puyallup River Bridge Replacement and I-5: Northbound Puyallup River Bridge Replacement projects

Activities for both projects
- Construct new northbound and southbound I-5 alignments, including additional HOV lanes
- Upgrade signing illumination, stormwater collection facilities, water quality treatment facilities, and rehabilitate I-5 mainline pavement
- Construct retaining walls
- Widen northbound and southbound I-5

Activities for I-5: Southbound Puyallup River Bridge Replacement
- Construct a new I-5 southbound bridge that crosses over the Puyallup River, railroad, and SR 167
- Demolish existing bridges over the Puyallup River, railroad, and SR 167

Activities for I-5: Northbound Puyallup River Bridge Replacement
- Construct a temporary work bridge over the Puyallup River
- Construct new I-5 northbound bridge over Puyallup River, railroad, and SR 167
- Realign 20th Street

Source: Aerial photos WSDOT (2007) and USGS (2005). All other data from Pierce County

EXHIBIT 4
Primary Project Components from Approximately Milepost 135.3 to Approximately Milepost 136.6

Tacoma/Pierce County HOV Program

Washington State Department of Transportation

graphics/11-18-08/rtb-HEC-R/06-03300-009/Supplemental EA

- Upgrades to signing, illumination, storm water collection facilities, and water quality treatment facilities; and resurfacing and reconstruction of main line I-5

1.3. I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV

This project would accomplish the following:

- Reconstruction of city street approaches to East Portland Avenue and East R Street to accommodate a change in grade
- Realignment and reconstruction of a new southbound I-5 off-ramp to East 27th Street
- Reconstruction of East 27th Street from the Puyallup River Bridge off-ramp to the southbound I-5 on-ramp
- Removal of the structures and reconstruction of the southbound on- and off-ramps crossing the T Street utilities
- Relocation of a 16-inch high pressure gas main
- Construction of a new southbound I-5 bridge over the Puyallup River, the railroad, and SR 167
- Demolition of the existing bridges over the Puyallup River, the railroad, and SR 167
- Widening southbound I-5 to accommodate HOV lanes
- Construction of new retaining walls
- Upgrades to signing, illumination, storm water collection facilities, and water quality treatment facilities

1.4. Improvements to the Stormwater Management System

Storm water runoff from I-5 would be managed according to the *Highway Runoff Manual* (WSDOT 2008), federal Clean Water Act requirements imposed by the Puyallup Tribe of Indians, and agreements and requirements of local jurisdictions including the city of Tacoma and the city of Fife.

Storm water management would require reconfiguring and retrofitting the existing storm water drainage conveyance systems and installing storm water management facilities to capture and treat runoff before its discharge to local receiving waters. Media filter drains (formerly called ecology embankments) would be used for storm water treatment along the I-5 shoulders and ramps where they are feasible. Where media filter drains are not feasible due to the width and/or slope of the roadway embankment, or because runoff sheet flow cannot be accomplished along the road shoulder, ponds would be built to provide water quality treatment for the corresponding drainage area.

Detention of runoff in one or more ponds would also be accomplished to control the rate of storm water flow into the city of Tacoma storm drain system. Detention pond storage and outlet flow control would be designed to meet the city's requirements for flow control. A large portion of the area within the project limits currently drains to a city of Tacoma trunk drain that discharges to the Puyallup River downstream of I-5. WSDOT would build a separate drainage system that would convey highway runoff to the Puyallup River, bypassing the city trunk drain system.

1.5. Avoidance and Minimization Measures

WSDOT uses best management practices (BMPs), WSDOT Standard Specifications, and design elements to avoid or minimize potential effects to the environment from this project. WSDOT will employ avoidance measures to minimize potential effects to the environment, and if avoidance is not feasible, WSDOT will mitigate for additional effects not addressed in the avoidance measures.

1.6. Wetland, Floodplain, and Riparian Habitat Mitigation Site

WSDOT is developing mitigation plans to address unavoidable permanent effects to wetlands, loss of floodplain storage volume, and loss of riparian habitat from the proposed projects. Two wetland mitigation sites are being considered by WSDOT – a 16.9-acre site that also would provide benefits to fish habitat but would not fully meet flood storage capacity needs and a 10.6-acre site that would also provide benefits to fish habitat and would fully meet flood storage capacity needs (Exhibit 5). A third potential site near the existing Puyallup River Bridge is being studied for additional floodplain mitigation only. Upon further investigation, one or more of the

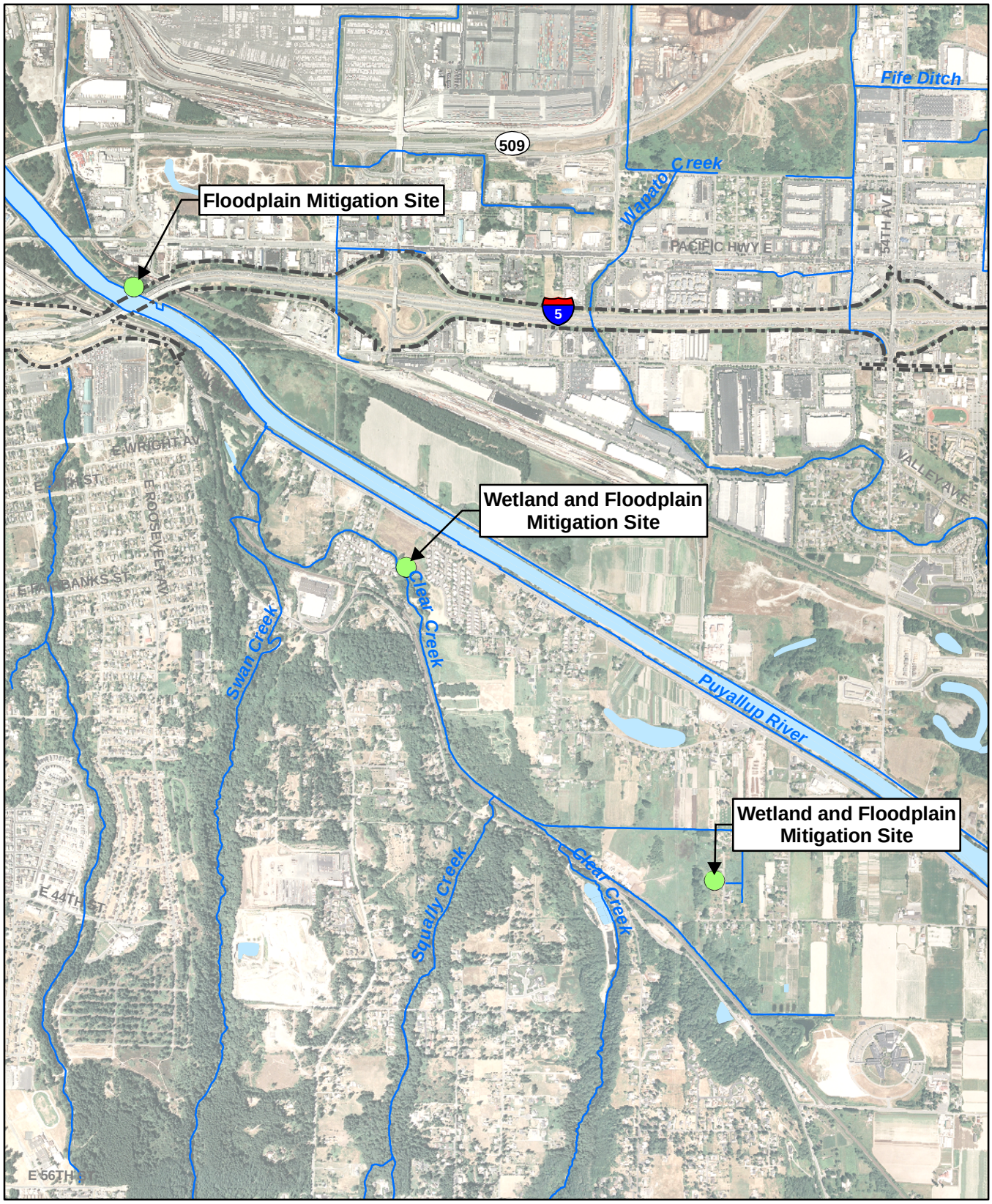

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EXHIBIT 5
Proposed Wetland and Floodplain Mitigation Sites
Tacoma/Pierce County HOV Program

Washington State Department of Transportation

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mitigation sites will be selected to mitigate for the projects. The wetland mitigation sites are located in unincorporated Pierce County in the Puyallup-White Rivers Water Resources Inventory Area (WRIA) 10 within 2 miles of the proposed projects. Both sites are located in the floodplain of the Puyallup River. The mitigation activities at the proposed sites will include the re-establishment, rehabilitation, and enhancement of wetlands including excavation of portions of the sites below grade to provide an increase in flood water storage volume. Riparian areas would be enhanced at both mitigation sites by removing nonnative vegetation and replanting with a diverse arrangement of shrub and trees species to offset vegetation shading effects associated with the new alignment of the Puyallup River Bridge.

2. Supplemental Environmental Assessment Coordination and Comments

WSDOT issued the supplemental EA on July 31, 2009, for public distribution and held a supplemental EA public hearing on August 18, 2009, at the Lincoln High School in Tacoma, Washington. WSDOT presenters requested that verbal comments be provided to a court reporter, written comments be provided on comment forms, or follow-up written comments be postmarked or received at the HOV project office by August 31, 2009. WSDOT also provided opportunities for public comment through a project website for the Tacoma/Pierce County HOV Program which included an online comment form. Translators were available for the public hearing as appropriate for affected minority populations.

The Wetland and Stream Assessment Report (Appendix E) was unintentionally omitted from the supplemental EA distributed on July 31, 2009. Although National Environmental Policy Act (NEPA) guidelines do not require inclusion of all appendices to the supplemental EA during the public comment period, it was WSDOT's intent to include the Wetland and Stream Assessment Report; therefore, the comment period was extended to September 17, 2009. The online supplemental EA with complete appendices was reposted on September 1, 2009. WSDOT also reissued CDs of the supplemental EA (with Appendix E) to the WSDOT Tacoma/Pierce County HOV Project Office, Tacoma/Pierce County libraries, and Fife City Hall; and advertised the extended comment period in newspapers and the online public notices posted on the WSDOT web page.

The Notice of Availability of the Supplemental EA and Notice of Supplemental EA Hearing were advertised in the following newspapers on the dates shown:

- *Tacoma News Tribune* on Sunday, July 19, 2009; Sunday, July 26, 2009; Sunday, August 2, 2009
- *Tacoma Weekly* on Wednesday, July 16, 2009; and Thursday, July 23, 2009
- *Fife Free Press* on Wednesday, July 16, 2009
- *Milton-Edgewood Signal* on Wednesday, July 16, 2009

The notice of an extended comment period for the Supplemental EA with complete set of appendices was advertised in the following newspapers on the dates shown:

- *Tacoma News Tribune* on Thursday, September 3, 2009
- *Fife Free Press* on Thursday, September 10, 2009

Newspaper display advertisements were placed in the following newspapers on the dates shown:

- *Tacoma Daily Index* on Friday, August 7, 2009; and Friday, August 14, 2009
- *Fife Free Press* and *Milton-Edgewood Signal* on Thursday, July 30, 2009
- *Tacoma Weekly* on Thursday, August 6, 2009
- *Tacoma Weekly*, *Fife Free Press*, and *Milton-Edgewood Signal* on Thursday, August 13, 2009
- *El Mundo* on Thursday, August 6, 2009; and Thursday, August 13, 2009
- *Viet Bao/South Viet News* on Thursday, August 6, 2009; and Thursday, August 13, 2009
- *Russian World Newspaper* on Monday, August 3, 2009
- *The Korea Times* on Friday, August 7, 2009; and Friday, August 14, 2009

Additional opportunities for the public to learn of Notice of Availability of the Supplemental EA and Notice of Supplemental EA Hearing include the following:

- The Notice of Availability of the Supplemental EA and Notice of Supplemental EA Hearing was announced on the Vietnamese talk show, *Saigon Radio SRBS HD 92.5 FM.*
- The Notice of Availability of the Supplemental EA and Notice of Supplemental EA Hearing was made available online on the WSDOT website for the Tacoma/Pierce County HOV Program.
- Fliers announcing the availability of the supplemental EA were distributed to 27 local businesses, libraries, and city offices. Fliers also included an invitation to attend the public hearing and comment on the supplemental EA document.

WSDOT provided the supplemental EA document directly to the following:

- Elected officials, tribes, and city administrators for jurisdictions within the project area
- Regulatory agencies, cooperating agencies, and all other agencies that have expressed interest in the project
- Fife City Hall
- Public libraries in proximity to the project
- The WSDOT website for the Tacoma/Pierce County HOV Program

A total of 11 people attended the August 18, 2009, public hearing. During the comment period, from July 31, 2009, through September 17, 2009, the following comments on the supplemental EA were submitted:

- Four people provided Carrie M. Berry, HOV Program Environmental Manager, their comments on the supplemental EA via e-mail.
- Two agencies provided written comments via letter.
- During the public hearing, three individuals gave oral comments to the court reporter, who recorded them in the Hearing Transcripts (oral comments).

The comments focused primarily on water resources; wetlands, fish, wildlife, and vegetation; hazardous materials; and transportation. In addition, one of the public hearing attendees requested and received other project documents during the public comment period. The additional information included a copy of the *Final Draft Supplemental Interchange Justification Report for the Tacoma/Pierce County HOV Program*, and a copy of the July 1999 *Interstate 5 and State Route 16 Tacoma Vicinity HOV Lanes Revised Environmental Assessment*.

3. Determination of Findings

3.1. National Environmental Policy Act Finding

The FHWA served as lead agency under the National Environmental Policy Act (NEPA) for the project. WSDOT prepared the supplemental EA in compliance with NEPA, 42 United States Code (USC) Section 4321 et seq. and with FHWA regulations, 23 Code of Federal Regulations (CFR) Part 771.

The supplemental EA discusses the potential impacts of the projects on the environment so that FHWA can determine whether significant adverse impacts (Council on Environmental Quality [CEQ] 1508.27) are probable. If such a determination were made, an environmental impact statement (EIS) would need to be prepared.

The supplemental EA indicates that the projects' construction and operation will not cause any significant adverse environmental impacts that will not be mitigated. This finding applies to all applicable environmental elements. After carefully considering the supplemental EA, its supporting documents, and the public comments and responses, FHWA finds under 23 CFR 771.121 that the proposed action, with the mitigation to which WSDOT has committed, will not have any significant adverse impacts on the environment. The record provides sufficient evidence and analysis for determining that an EIS is not required.

3.2. Air Quality Conformity Statement

The projects lie within CO, ozone, and PM_{10} maintenance areas and must comply with the project level conformity criteria of the EPA Conformity Rule (40 CFR 93) and with Washington Administrative Code (WAC) Chapter 173-420s. The projects would have no adverse effects on regional air quality during operation and would comply with the national ambient air quality standards and the requirements for mobile source air toxics. This project, as well as all others in the Puget Sound Regional Council's (PSRC) Transportation Improvement Program and Regional Transportation Plan, conforms to the State Implementation Plan (SIP) at the regional level. The U.S. Environmental Protection Agency has

approved the current SIP for this area. FHWA has approved PSRC's Transportation Improvement Program conformity analysis. This project conforms to the SIP and to federal and state Clean Air Act requirements of 40 CFR 93 and WAC 173-420.

3.3. Surface Water, Floodplains, and Water Quality Finding

The project will involve a number of water resources located both within and outside the project limits including the Puyallup River, Erdahl Ditch, Thea Foss Waterway, Blair Waterway, Commencement Bay, wetlands, floodplain areas, and ground water.

Project construction would result in temporary, minor effects on water quality caused by construction. The project also would create 22.7 acres of new impervious surface area. WSDOT would install new storm water management facilities to treat approximately 77.7 acres of impervious areas, thereby treating a substantial amount of highway surfaces and interchanges that currently have no treatment. In addition, WSDOT would create compensatory flood storage volume, restore wetlands through compensatory mitigations, and construct a new storm water outfall pipe to the Puyallup River to alleviate flow to the city of Tacoma's drainage system.

3.4. Endangered Species Act Finding

The FHWA completed Endangered Species Act (ESA) Section 7 consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (the "Services"). The consultation culminated with the issuance of a biological opinion on March 16, 2009 (Attachment F). In the opinion, the Services concluded that:

- The action, as proposed, is not likely to jeopardize the continued existence of Puget Sound Chinook salmon, Puget Sound steelhead, or Coastal-Puget Sound Bull Trout or result in the destruction or adverse modification of designated critical habitat for Puget Sound Chinook salmon and Coastal-Puget Sound Bull Trout.

The incidental take statement included in the biological opinion describes reasonable and prudent measures the Services consider necessary or appropriate to minimize incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the Federal agency and any person who

performs the action must comply with to carry out the reasonable and prudent measures. On April 15, 2009, FHWA requested clarification on several terms and conditions included in the biological opinion. On April 24, 2009 (Attachment F), the National Marine Fisheries Service issued a clarification letter addressing FHWA's concerns. Upon issuance of this clarification letter, the Services and FHWA concur that proposed actions that meet these terms and conditions, as clarified, will be exempt from the Endangered Species Act take prohibition. On October 7, 2009, consistent with 50 CFR §402.16, the FHWA provided the National Marine Fisheries Service with information regarding the proposed mitigation activities at the Clear Creek Restoration site and associated changes in the extent of project-related effects that were not previously considered. On December 16, 2009, the National Marine Fisheries Service determined these changes would not alter the overall conclusions described in the original consultation. However, the National Marine Fisheries Service added measures and conditions in this letter to help minimize turbidity and suspended sediment impacts in Clear Creek.

3.5. Magnuson-Stevens Fishery Conservation and Management Act Finding

Pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, FHWA completed consultation with the National Marine Fisheries Service for essential fish habitat (EFH). The National Marine Fisheries Service concluded that the project would have adverse effects on in-water and riparian habitats as well as water quality and proposed conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. As required by 50 CFR 600.920(j)(1),the FHWA provided a detailed written response to National Marine Fisheries Service on April 13, 2009 (Attachment F), regarding its EFH conservation recommendations. Of the 29 conservation recommendations, FHWA adopted 7 conservation measures in their entirety, and partially adopted or adopted with clarification another 10 conservation measures. The FHWA did not concur with 12 of the conservation recommendations. Upon receipt of this response letter, the National Marine Fisheries Service and FHWA concurred that FHWA's obligations under the Magnuson-Stevens Fishery Conservation and Management Act were fulfilled. On October 7, 2009, the FHWA provided information regarding the proposed mitigation activities at the Clear Creek Restoration site to the National Marine Fisheries Service to update their

files. The FHWA determined that activities at the Clear Creek Restoration site will result in a net benefit for essential fish habitat as a result of habitat improvements in the Clear Creek basin and, therefore, did not request reinitiation of the Tacoma/Pierce County HOV consultation for EFH.

3.6. Farmland Finding

The land use in the vicinity of the projects does not include active farming. Therefore, the Farmlands Protection Policy Act of 1981 (7 USC 4201-4209) and other applicable state and federal farmlands protection policies, orders, and guidance do not apply to the proposed project.

3.7. Wetland Finding

The projects will permanently affect 3.52 acres of wetlands and 1.74 acres of wetland buffers. Permanent direct effects to wetlands and wetland buffers were minimized during design, but complete avoidance was not possible. Roadway designers superimposed maps of delineated wetlands over their designs as a basis for avoiding and minimizing effects to wetlands and wetland buffers. Adjustments to design resulted in reductions of effects to wetlands. Effects were minimized primarily through site-specific design techniques. However, total avoidance of wetland effects was not possible due to constraints associated with safety and design guidelines. The unavoidable effects on wetlands within the study area are associated with interchange improvements and realigned roadways at the Puyallup River bridges.

To mitigate permanent effects to wetlands, WSDOT will provide compensatory mitigation for unavoidable effects to the wetlands and wetland buffers, and obtain permits from the U.S. Army Corps of Engineers, Washington State Department of Ecology, and local governments for work in regulated waters and wetlands.

The FHWA finds that there is no practicable alternative to the proposed construction within wetlands. The proposed projects include all practicable measures to reduce impacts to wetlands that may result from the proposed project.

3.8. Section 106 Finding

Archival review, tribal consultation, field surveys, and subsurface cultural resource surveys identified several historic, cultural, and archaeological

resources within the study area. WSDOT initiated tribal consultation for the project in July 2006 with the Nisqually Indian Tribe, Muckleshoot Indian Tribe, Puyallup Tribe of Indians, Snoqualmie Indian Tribe, Yakama Nation and the Squaxin Island Tribe, describing the projects and seeking their input on the project. From those whom WSDOT initiated consultation with, only the Puyallup Tribe of Indians participated in the consultation associated with this project. Consultation was conducted between WSDOT, FHWA, Washington State Department of Archaeology and Historic Preservation, U.S. Army Corps of Engineers and the Puyallup Tribe of Indians.

In the area of potential effects (APE), it was determined that the projects will occur in the vicinity of one previously documented Washington Heritage Register listed site and two newly identified archaeological sites. One of the archaeological sites will be directly and adversely affected by project-related construction activities planned from approximately 2 meters to 6 meters (6.5 feet to 20 feet) below the existing grade.

In December 2009, a Memorandum of Agreement (Attachment F) was signed by the Washington State Historic Preservation Officer, United States Army Corps of Engineers, FHWA, WSDOT, and the Puyallup Tribe of Indians. The Memorandum of Agreement identifies specific measures to mitigate for the adverse effect to the archaeological site, and identifies how WSDOT will avoid, minimize, or mitigate the adverse effects on historic properties. This complies with FHWA's obligations under Section 106 of the National Historic Preservation Act of 1966, as amended, and implementing regulations (36 Code of Federal Regulations [CFR] 800).

3.9. Section 4(f) Finding

The existence of potential U.S. Department of Transportation (USDOT) Act of 1966 Section 4(f) resources was evaluated as part of the supplemental EA.

The project will involve activities in McKinley Park including disruptions in utility service, relocation of a utility pole, and a subterranean easement and installation of subsurface anchors. As defined under Section 4(f), acquisition of the subsurface easement constitutes a use, and the construction disturbance in the western corner of the park and the potential temporary disruption in utility service constitute temporary uses.

The proposed use of the park would not alter any recreational facility at the park and would not have an effect on any planned or anticipated recreational activities, features, or attributes of the park.

The FHWA finds that the use of McKinley Park is *de minimis* and the owners of McKinley Park (Metro Parks Tacoma and the City of Tacoma) have concurred with FHWA's determination (Attachment F). Under the 2005 federal SAFETEA-LU provisions, where use of a Section 4(f) resource is determined to be *de minimis*, no assessment of avoidance alternatives is necessary.

3.10. Environmental Justice Finding

Project construction would temporarily increase noise, vibration, and dust levels; require local transit/travelers to take a more circuitous route to reach their destinations; detract from views and visual quality; and create glare from lighting during nighttime construction. In addition, project construction would also require a minor amount of acquisition of property.

Based upon a review of the study area demographics and the potential impacts, FHWA finds that the construction and operation of the proposed projects will likely disproportionately affect minority and low-income populations. However, with the implementation of the proposed mitigation measures, the severity of effects would be minimized, and project operation would not result in adverse effects.

Project benefits, such as improvements in transit and non-motorized transportation facilities, are for the traveling public as a whole.

3.11. Noise Finding

The projects will create some temporary construction noise. Within the project limits, construction noise is regulated through the Washington State Department of Ecology limits (WAC 173-40), Pierce County, the city of Fife, and the city of Tacoma. For operation, WSDOT considered noise abatement measures at 12 noise impact locations, and considered noise walls at 4 locations consistent with federal regulations (23 CFR 772) and WSDOT policies as defined in *Traffic Noise Analysis and Abatement Policy and Procedures* (WSDOT 2006). FHWA determined that none of the noise walls were feasible to implement.

ATTACHMENT A

Errata to Supplemental Environmental Assessment

Errata to Supplemental Environmental Assessment

The following corrections apply to the supplemental EA for the Tacoma section of the Tacoma/Pierce County HOV Program: I-5: M Street to Portland Avenue – HOV; I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV; and I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV projects, which was issued on July 31, 2009. These corrections clarify, update, or enhance the readability of the supplemental EA and in no way change the Finding of No Significant Impact (FONSI); therefore the issuance of a revised supplemental EA is unnecessary. Changes to supplemental EA text are identified by their corresponding page number in the document's original published edition.

Changes to the supplemental EA are identified by heading title, page number, and paragraph in the document's original published edition. Each deletion of original text is shown with a line striking through it; new text is indicated by an underline.

Changes to the Supplemental Environmental Assessment

Summary
How will the projects affect the natural environment?
page xxi, fourth paragraph
Text is changed as follows:

Wetlands – Permanent direct effects to wetlands and wetland buffers were minimized during design, but complete avoidance was not possible. The combined total permanent wetland effects from the proposed projects would be approximately ~~3.40~~ 3.52 acres and approximately 1.74 acres for wetland buffers. To mitigate permanent effects to wetlands, WSDOT would provide compensatory mitigation for unavoidable effects to the wetlands and wetland buffers. The mitigation would include monitoring of compensatory wetlands for 10 years after installation.

Summary
How will the projects affect the built environment?
page xxiv, insert after 'Visual Quality' paragraph
Add text as follows:

Historic, Cultural, and Archaeological Resources– The project would occur in the vicinity of one previously documented Washington Heritage Register listed site and a newly identified archaeological site. The archaeological site would be directly affected by project-related construction activities planned from approximately 2 meters to 6 meters (6.5 feet to 20 feet) below the existing grade.

To mitigate for the potential effect to the archaeological site, measures may include engineering design modifications, relocation of project-related activities, compensatory mitigation, data collection, or other appropriate cultural resource mitigation alternatives. Mitigation measures will be determined through consultation with the signatories to the Memorandum of Agreement – the Washington State Historic Preservation Officer, U.S. Army Corps of Engineers, FHWA, WSDOT, and the Puyallup Tribe of Indians. Monitoring for cultural resources is recommended if project-related activities are planned below approximately 2 meters (6.5 feet) in areas near the Puyallup River.

Chapter 2. Project Description, Primary Project Features
Bridges over Puyallup River
page 2-13, last paragraph
Text is changed as follows:

Construction of the new bridges over the Puyallup River would require temporary access for crossing the existing railroad tracks on either side of the Puyallup River. Every effort would be made to accommodate the temporary crossings and temporary roadways within the construction footprint of the existing and future bridges. In addition, WSDOT would construct bridge abutments that could affect the U.S. Army Corps of Engineers levees on the both sides of the Puyallup River (Tacoma side and Fife side). WSDOT would work with the Corps to minimize any impacts to the levee, and ensure that the levees are not compromised and retain their integrity. Because the soils in this location are uncompacted and susceptible to liquefaction during an earthquake, WSDOT would improve the stability of the ground at several locations to prevent the bridge abutments and piers from shifting during a seismic event.

Chapter 2. Project Description, Primary Project Features
Lighting, Signage, and Traffic Control Systems
Lighting
page 2-15, last paragraph continuing to 2-16
Text is changed as follows:

WSDOT would replace the existing illumination system. The existing illumination system includes lighting units mounted on 40-foot poles in the median, spaced every 200 to 250 feet. The new illumination system would be mounted on 40- to 50-foot poles on the outside shoulders spaced 120 to 240 feet apart. The new lighting system meets approved standards. ~~The new lighting system, approved by the International Dark-Sky Association, would reduce light pollution including glare, light trespass, and sky-glow. In addition to a reduction in light pollution, the new lighting fixtures provide higher energy efficiency.~~

Chapter 2. Project Description, Primary Project Features
Potential Mitigation Sites
page 2-16, last paragraph
Text is changed as follows:

WSDOT is developing mitigation plans to address unavoidable permanent effects to wetlands, loss of floodplain storage volume, and loss of riparian habitat from the proposed projects. ~~t~~Two wetland mitigation sites are being considered by WSDOT – a ~~16.9~~ 10.6-acre site that would ~~provide needed flood storage capacity~~ provide benefits to fish habitat and ~~but would not~~ fully meet flood storage capacity needs, and a ~~10.6~~ 16.9-acre site that ~~would also provide benefits to fish habitat but~~ and would not ~~not~~ fully meet flood storage capacity needs (Exhibit 2-6).

Chapter 2. Project Description
When would the projects be built?
page 2-19, first paragraph under heading at middle of page
Text is changed as follows:

Work on the projects is expected to extend from 2010 through 2017—approximately 7 years (Exhibit 2-7). Large portions of the roadway work ~~would~~ may be performed at night to avoid interfering with higher traffic levels during daylight hours.

Chapter 3, Section 3.1. Water Resources
Current Surface Water Drainage and Conveyance, Erdahl Ditch
page 3-17, first paragraph
Text is changed as follows:

Storm water runoff from highway surfaces between the high point of the Puyallup River Bridge and the Port of Tacoma Road interchange currently drains via the Erdahl ditch into the salt water of the Blair Waterway. The Blair Waterway drains to Commencement Bay approximately 1.3 miles downstream (north) of the project limits. The Erdahl ditch has sufficient capacity for the additional storm water runoff that would result from the projects (Entranco 2004), under normal conditions. The Erdahl ditch is considerably degraded due to encroaching industrial and roadway development and it is not fish bearing; therefore, it has not been the focus of riparian and aquatic habitat improvement over the years.

Chapter 3, Section 3.1. Water Resources
Existing Flooding Problems in the Tacoma Storm Drain System
page 3-17, subheading
Text for the heading is changed as follows:

Existing Flooding Problems ~~in the Tacoma Storm Drain System~~

Chapter 3, Section 3.1. Water Resources
Groundwater
page 3-18, first paragraph under heading
Text is changed as follows:

Groundwater supplies up to 40 percent of Tacoma's water in the summer and supplements the supply from the Green River at other times of the year. Most of the groundwater comes from wells in the South Tacoma wellfield that extends from the Nalley Valley south to Lakewood (TPCHD 2007), several miles south and west of the project limits. Parts of the project, including sites proposed for wetland, floodplain, and riparian habitat mitigation, lies above a critical aquifer recharge area in the South Tacoma Groundwater Protection District and within the 10-year travel time wellhead protection areas designated for several public water supply wells for the city of Tacoma. In addition, the Puyallup River is the eastern and northern boundary of the Central Pierce County Aquifer as a sole source aquifer. The sole source designation requires that projects with federal involvement (this project) be subject to review by the EPA. The groundwater resources in project vicinity are shown on Exhibit 3.1-2.

Chapter 3, Section 3.1. Water Resources
Would the projects have direct effects on water resources?
page 3-22, first paragraph
Text is changed as follows:

- **Loss of Low-Quality Wetlands within the Project Limits.** Approximately 3.40 3.52 acres of wetlands would be permanently affected as a result of the projects. A detailed description of these wetlands and potential effects and mitigation are provided in Section 3.2 Wetlands.

Chapter 3, Section 3.1. Water Resources
Would the projects have direct effects on water resources?
page 3-22, second paragraph
Text is changed as follows:

- **Effects to Groundwater Recharge Due to Increased Impervious Surface Area and Compacted Soils.** Although most of the area within the project limits overlies mapped aquifer recharge areas and increased impervious surface area would reduce the potential for infiltration of runoff that recharges the underlying groundwater, the city of Tacoma does not want runoff from within the project limits to infiltrate to the underlying aquifer in the South Tacoma Groundwater Protection District (Tacoma 2006). The effects of reduced storm water infiltration are expected to be inconsequential because of the large scale of the aquifer recharge area and the relatively low permeability

of the soils in the I-5 right of way throughout most of the project limits. In addition, removal of fill to create compensatory flood storage is not expected to alter local ground water recharge occurring in the project area.

Chapter 3, Section 3.2. Wetlands
page 3-27, first paragraph
Text is changed as follows:

This project is not expected to result in substantial, unavoidable, adverse effects on wetlands. Permanent direct effects to wetlands and wetland buffers were minimized during design, but complete avoidance was not possible. The combined total permanent wetland effects from the proposed projects would be approximately ~~3.40~~ 3.52 acres and approximately 1.74 acres for wetland buffers.

Chapter 3, Section 3.2. Wetlands
Will project construction have direct effects on wetlands?
page 3-37, last paragraph continuing to 3-28
Text is changed as follows:

These projects would permanently affect some wetlands in the study area. Permanent direct construction effects to wetlands were minimized during design, but complete avoidance was not possible. The combined total permanent direct wetland effects from the proposed projects would be approximately ~~3.40~~ 3.52 acres. This value may change over time as the design of the project progresses.

Chapter 3, Section 3.2. Wetlands
Will project construction have direct effects on wetlands?
I-5: Portland Avenue to Port of Tacoma Road – Northbound and Southbound HOV Projects
page 3-38, first paragraph under heading
Text is changed as follows:

The I-5: Portland Avenue to Port of Tacoma Road – Northbound and Southbound HOV projects would result in unavoidable permanent effects to five wetlands (AL, B2, C1, P2, and Y) amounting to ~~2.56~~ 2.67 acres, or approximately 13 percent of the total 20.02 acres of wetlands delineated within the study area. Based on acreage, the I-5: Portland Avenue to Port of Tacoma Road – Northbound and Southbound HOV projects would mostly affect emergent and emergent/forested, Ecology Category III and IV, depressional wetlands. Minor effects to riverine and emergent/scrub-shrub wetlands are also anticipated.

Chapter 3, Section 3.3. Fish
What regulations apply to fish habitat in the study area?
State Regulations
page 3-45, first paragraph
Text is changed as follows:

The Hydraulic Code Rules (Chapter 222-110 of the Washington Administrative Code [WAC]) are administered by the ~~Washington Department of Natural Resources~~ Washington Department of Fish and Wildlife.

Chapter 3, Section 3.3. Fish
What types of sensitive fish are located in the study area and where are they found?
pages 3-46, last paragraph continuing to page 3-47
Text is changed as follows:

Information from the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the state Department of Fish and Wildlife indicates the presence of three federally threatened fish species in the study area: the Puget Sound evolutionarily significant unit of Chinook salmon (*Oncorhynchus tshawytscha*), the Coastal–Puget Sound distinct population segment of bull trout (*Salvelinus confluentus*), and the Puget Sound distinct population segment of steelhead (*O. mykiss*). The following two rockfish species could also be potentially present: bocaccio (*Sebastes paucispinis*) and yelloweye rockfish (*S. ruberrimus*). Bocaccio has been proposed for listing as endangered, and yelloweye rockfish has been proposed for listing as threatened. The National Marine Fisheries Service recently identified the Pacific eulachon (*Thaleichthys pacificus*) as a proposed threatened species. Within the study area, occurrence of eulachon is unknown. However, the lack of historic and current data suggest that presence of eulachon in Puget Sound tributaries may be limited. The National Marine Fishery Service has also identified the southern distinct population segment of the green sturgeon (*Acipenser medirostria*) as threatened. The study area does not overlap with the geographic range of the southern distinct population segment of the green sturgeon.

Chapter 3, Section 3.3. Fish
What types of sensitive fish are located in the study area and where are they found?
page 3-47, second full paragraph at middle of page
Text is changed as follows:

Other sensitive species (state or federal species of concern or state-listed or managed species include): Forage fish (Pacific herring [*Clupea pallasi*], sand lance [*Ammodytes hexapterus*], anchovy [*Engraulis mordax*], surf

smelt [*Hypomesus pretiosus*]), Pacific lamprey (*Lampetra tridentata*) and River lamprey (*Lampetra ayresi*), and chum (*O. keta*), and sockeye salmon (*O. nerka*). ~~The National Marine Fishery Service recently identified the Pacific smelt (*Thaleichthys pacificus*) as a proposed threatened species; and the southern distinct population segment of the green sturgeon (*Acipenser medirostria*) as threatened. The study area does not overlap with the geographic range of the southern distinct population segment of the green sturgeon.~~

Chapter 3, Section 3.3. Fish
Would the projects affect threatened and endangered species?
page 3-50, first paragraph
Text is changed as follows:

~~The projects could affect but are not likely to adversely affect three federally threatened fish species: the Puget Sound evolutionarily significant unit of Chinook salmon, the Coastal–Puget Sound distinct population segment of bull trout, and the Puget Sound distinct population segment of steelhead.~~ The project's potential adverse effects to listed fish have been addressed through ESA consultation and the issuance of a Biological Opinion. The Biological Opinion concludes that the proposed project will have temporary and permanent adverse effects to listed fish species, but also finds that the proposed project will not jeopardize the continued existence of these species, and will not destroy or adversely modify their designated critical habitat. Potential project-related effects on these species due to project construction and operation are described below.

Chapter 3, Section 3.7. Visual Quality
How would the direct effects on visual quality be mitigated?
Mitigation for Operation Effects
Page 3-99, bulleted text under last paragraph
Text is changed as follows:
Install a new lighting system that meets ~~the~~ approved standards ~~approved by the International Dark-Sky Association~~

Chapter 3, Section 3.8. Historical, Cultural, Archaeological Resources
page 3-101, second paragraph
Text is changed as follows:

To mitigate for the potential effect to the archaeological site, mitigation measures may include engineering design modifications, relocation of project-related activities, compensatory mitigation, data collection, or other appropriate cultural resource mitigation alternatives. Mitigation measures will ~~that would~~ be determined through consultation with the

required signatories to the Memorandum of Agreement~~;~~ – the Washington State Historic Preservation Officer, U.S. Army Corps of Engineers, FHWA, WSDOT, and the Puyallup Tribe of Indians. Monitoring for cultural resources is recommended if project-related activities are planned below approximately 2 meters (6.5 feet) in areas near the Puyallup River.

Chapter 3, Section 3.8. Historical, Cultural, Archaeological Resources
Would project construction have direct effects on historic, cultural, and archaeological resources?
page 3-108, second paragraph under heading, middle of page
Text is changed as follows:

Construction-related ground disturbance greater that 2 meters (6.5 feet) on the south side of the Puyallup River near Bay Street ~~has the potential to~~ would have direct effects by disturbing or destroying the historic, cultural and archaeological resources related to a subsurface prehistoric site (45PI930). Based on the information collected for 45PI930, the site is recommended eligible to the National Register of Historic Places under Criterion D: has yielded or may be likely to yield information important to prehistory or history. ~~If p~~ Project-related activities are planned from approximately 2 to 6 meters (6.5 to 20 feet) below the existing grade, this direct effect would be harmful to the resource, and mitigation measures would be necessary.

Chapter 3, Section 3.8. Historical, Cultural, Archaeological Resources
How would the direct effects on historic, cultural, and archaeological resources be mitigated?
page 3-109, first paragraph
Text is changed as follows:

The proposed projects, as designed, ~~may~~ will have a direct effect on the newly identified prehistoric site (45PI930) near Bay Street and the Puyallup Indian Cemetery. Consultation with the Puyallup Tribe, WSDOT, and Department of Archaeology and Historic Preservation ~~may be~~ is necessary to identify mitigation measures to eliminate the adverse effect to the 45PI930 due to its recommended eligibility to the National Register of Historic Places as a prehistoric archaeological site. A ~~Programmatic~~ Memorandum of Agreement will be developed between the signatories – ~~Department of Archaeology and Historic Preservation~~ Washington State Historic Preservation Officer, U.S. Army Corps of Engineers, FHWA, WSDOT, and the Puyallup Tribe – to address the adverse effects to the recorded archeological site(s) and mitigation specific to the proposed stormwater outfall and the selected wetland and floodplain mitigation site.

Chapter 3, Section 3.10. Geology and Soils
Would project operation have direct effects related to geology and soils?
page 3-130, second bullet
Text is changed as follows:

- ~~Monitor the levels of vibrations during construction~~

Chapter 5. Summary of Proposed Mitigation Measures
Fish
page 5-6, last paragraph continuing to 5-7
Text is changed as follows:

Temporary work trestles would be placed in the river as part of the bridge construction. ~~WSDOT and FHWA currently are coordinating with the Puyallup Tribe of Indians regarding mitigation opportunities to offset project effects to fish habitat and the tribal fishery resulting from construction activities in the Puyallup River, and additional mitigation measures may be implemented. The following measures will be implemented to minimize these effects:~~ To offset the effects to fish habitat and the tribal fishery resulting from construction activities in the Puyallup River, WSDOT proposes the following:

- WSDOT will create off-channel habitat in a tributary to the Puyallup River to offset the effects to fish habitat. This mitigation activity will provide increased shading to maintain or decrease water temperatures, improved bank stability, increased organic product and export, and off-channel habitat for fish species during high water events.
- Limit the amount of time that temporary structures are in place to the minimum necessary
- Use untreated wood for decking on temporary structures

Chapter 5. Summary of Proposed Mitigation Measures
Fish
page 5-8, first paragraph
Text is changed as follows:

~~Mitigation opportunities are being explored with the Puyallup Tribe of Indians for effects to fish resources, riparian and aquatic habitat. The mitigation ultimately would provide increased shade along the Puyallup River and stream(s) within the study area and should maintain or decrease water temperatures, increase bank stability, increase organic production and export, and create habitat for fish and wildlife that depend on riparian areas.~~

Chapter 5. Summary of Proposed Mitigation Measures
Visual Quality
page 5-11, under second paragraph, second bullet
Text is changed as follows:

Install a new lighting system that meets ~~the~~ approved standards ~~approved by the International Dark-Sky Association~~

Chapter 5. Summary of Proposed Mitigation Measures
Historical, Cultural, and Archaeological
page 5-11, first paragraph and subsequent bulleted text
Text is changed as follows:

The proposed projects, as designed, ~~may~~ will have a direct effect on the newly identified prehistoric site (45PI930) near Bay Street and the Puyallup Indian Cemetery. The following mitigation measure will be implemented:

- Consult with the Puyallup Tribe and the Department of Archaeology and Historic Preservation~~, if necessary,~~ to identify mitigation measures to eliminate the adverse effect to the 45PI930 site due to its recommended eligibility to the National Register of Historic Places as a prehistoric archaeological site. Mitigation measures could include engineering design modifications, relocation of project-related activities, compensatory mitigation, data collection or other appropriate mitigation measures that would be determined through consultation.

- Develop a ~~Programmatic~~ Memorandum of Agreement between the signatories – ~~Department of Archaeology and Historic Preservation~~ Washington State Historic Preservation Officer, U.S. Army Corps of Engineers, the Puyallup Tribe, FHWA, and WSDOT to address the adverse effects to the recorded archeological site(s) and mitigation specific to the proposed stormwater outfall and the selected wetland and floodplain mitigation site.

Chapter 5. Summary of Proposed Mitigation Measures
Geology and Soils
page 5-12, under introductory paragraph, fifth bullet
Text is changed as follows:

- ~~Monitor the levels of vibrations during construction~~

Chapter 6. Public, Agency and Tribal Involvement
Pre-application Meetings
page 6-3, first paragraph under heading
Text is changed as follows:

WSDOT is considering several mitigation sites in the lower Puyallup subbasin to provide compensatory mitigation for the expected wetland and fish habitat effects and to compensate for reduced floodplain storage due to the projects. Joint pre-application meetings in support of permitting one of the sites under consideration have occurred with the Corps, Ecology, WDFW, Pierce County, and the city of Fife. The selected mitigation site would mitigate primarily for wetland effects but would also mitigate floodplain fill effects, and provide benefits to fish habitat. Discussions at these meetings have addressed site suitability, site hydrology, proposed wetland mitigation measures, buffer widths, and use of the site for floodplain compensation.

Chapter 7. References
page 7-7, sixth paragraph [note: this is a reference to a citation on page 3-65 of the supplemental EA]
Text is changed as follows:

WSDOT. 2004. *Best Management Practices Field Guide for ESA Subsection 4(d) Habitat Protection.* Washington State Department of Transportation, ~~Tacoma/Pierce County HOV Program~~ Maintenance and Operations Division, Maintenance Office. March 2004.

ATTACHMENT B

Notice of Availability of FONSI and Supplemental EA

Notice of Availability of FONSI and Supplemental EA

This attachment provides the notice prepared for the FONSI and Supplemental EA along with information on publication of these notices.

NOTICE OF AVAILABILITY OF FINDING OF NO SIGNIFICANT IMPACT, TACOMA/PIERCE COUNTY HOV PROGRAM I-5: M STREET TO PORTLAND AVENUE – HOV I-5: PORTLAND AVENUE TO PORT OF TACOMA ROAD – NORTHBOUND HOV I-5: PORTLAND AVENUE TO PORT OF TACOMA ROAD – SOUTHBOUND HOV

The Federal Highway Administration (FHWA) issued the Finding of No Significant Impact (FONSI) on January 19, 2010 for three projects in the Tacoma/Pierce County HOV Program: I-5: M Street to Portland Avenue – HOV; I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV; and I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV.

This finding is based on the evaluation of the supplemental Environmental Assessment (EA) issued on July 31, 2009, and public and agency input during the public comment period from July 31 through September 17, 2009. The public comment period included a public hearing on August 18, 2009.

Description of Proposed Project

The Tacoma/Pierce County HOV Program: I-5: M Street to Portland Avenue – HOV; I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV; and I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV– would improve traffic flow and increase traffic safety by designing and constructing southbound and northbound HOV lanes on Interstate 5, improving ramp alignments, and adding auxiliary lanes. The proposed project includes the following improvements:

I-5: M Street to Portland Avenue – HOV

This project would accomplish the following:

- Reconstruction of main line I-5 northbound and southbound, including additional HOV lanes
- Reconstruction of on- and off-ramps at the northbound and southbound I-5/I-705/SR 7 interchange
- Demolition of existing bridges and reconstruction of new bridges at Pacific Avenue, McKinley Way, and East L Street
- Reconstruction of city street approaches to the Pacific Avenue Bridge, McKinley Way Bridge, and L Street Bridge

- Construction of a new bridge on a new northbound I-5 alignment over I-705. The existing northbound bridge will be retrofitted for HOV lanes.
- Construction of retaining walls
- Upgrades to signing, illumination, storm water collection facilities, and water quality treatment facilities; and resurfacing and reconstruction of main line I-5

I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV

This project would accomplish the following:

- Reconstruction of a portion of Portland Avenue under main line I-5 overcrossing
- Widening and seismic retrofit of I-5 bridges over East Portland Avenue and East Bay Street
- Reconstruction of East Bay Street from East 27th Street to East 28th Street from a one-way roadway to a two-way roadway
- Reconstruction of East 28th Street from Portland Avenue to Bay Street/northbound I-5 on-ramp
- Construction of a new ramp metering system at the East 28th Street on-ramp to northbound I-5
- Reconstruction of East 27th Street from the Puyallup River Bridge off-ramp to the southbound I-5 on-ramp
- Reconstruction of and improvements to the existing northbound I-5 on- and off-ramps in the vicinity of East Bay Street and northbound SR 167
- Removal and reconstruction of main line I-5 and northbound on- and off-ramp bridges over T Street utilities
- Construction of a temporary work bridge over Puyallup River
- Construction of a new northbound I-5 bridge over the Puyallup River, the railroad, and SR 167
- Construction of new retaining walls
- Realignment of 20th Street East in Fife
- Widening of northbound mainline I-5 to accommodate an HOV lane

- Widening a portion of southbound main line I-5 east of Port of Tacoma Road to accommodate HOV lanes
- Reconstruction of and improvements to the signal systems at multiple intersections
- Upgrades to signing, illumination, storm water collection facilities, and water quality treatment facilities; and resurfacing and reconstruction of main line I-5

I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV

This project would accomplish the following:

- Reconstruction of city street approaches to East Portland Avenue and East R Street to accommodate a change in grade
- Realignment and reconstruction of a new southbound I-5 off-ramp to East 27th Street
- Reconstruction of East 27th Street from the Puyallup River Bridge off-ramp to the southbound I-5 on-ramp
- Removal of the structures and reconstruction of the southbound on- and off-ramps crossing the T Street utilities
- Relocation of a 16-inch high pressure gas main
- Construction of a new southbound I-5 bridge over the Puyallup River, the railroad, and SR 167
- Demolition of the existing bridges over the Puyallup River, the railroad, and SR 167
- Widening southbound I-5 to accommodate HOV lanes
- Construction of new retaining walls
- Upgrades to signing, illumination, storm water collection facilities, and water quality treatment facilities

Where Can I View the Supplemental EA and the FONSI?

Individual printed copies of this supplemental EA and FONSI will be available for purchase. The cost for the supplemental EA is $26.00; the cost for the FONSI is $18.00. Both charges cover the cost of reproduction only. Electronic copies of the supplemental EA and FONSI are available on compact disc (CD) free of charge. Printed and/or electronic copies of these documents can be obtained by contacting:

Carrie M. Berry, Environmental Manager
Tacoma/Pierce County HOV Program
Washington State Department of Transportation, Olympic Region
(360) 709-8147
Email: berryc@wsdot.wa.gov

Both documents are available to review online at: http://www.wsdot.wa.gov/projects/piercecountyhov/. The supplemental EA and FONSI are at the following public libraries:

WSDOT Tacoma/Pierce County HOV Project Office
724 Quince Street, SE, Suite 206
Olympia, WA 98501

Gig Harbor/ Peninsula Library
4424 Point Fosdick Drive NW
Gig Harbor, WA 98335

Lakewood Library
6300 Wildaire Road SW
Lakewood, WA 98499

Parkland/ Spanaway Library
13718 Pacific Avenue S.
Tacoma, WA 98444

Milton/Edgewood Library
1000 Laurel Street
Milton, WA 98354

South Hill Library
15420 Meridian E.
South Hill, WA 98375

University Place Library
7315 27th Street W., Suite D
University Place, WA 98466

Tacoma Public Library (downtown location in the Local Tacoma Northwest Conference section)
1102 Tacoma Avenue S.
Tacoma, WA 98402

Fife City Hall
5411 23rd Street E.
Fife, WA 98424

Who Can I Contact with Questions?

Project questions can be submitted in writing to the WSDOT Tacoma/Pierce County HOV Team Environmental Manager, Carrie M. Berry, at:

Mail: 724 Quince Street SE, Suite 206
Olympia, WA 98501

Email: berryc@wsdot.wa.gov

Individuals requiring reasonable accommodation may request written materials in alternative formats: large print, Braille, cassette tape, or on computer disk—please call (360) 705-7097. Persons who are deaf or hard of hearing, please call the Washington State Telecommunications Relay Service at 1 (800) 833-6384, or Tele-Braille at 7-1-1, and ask to be connected to (360) 705-7097.

The FHWA and WSDOT ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally-assisted programs and activities. For questions regarding WSDOT's Title VI Program, you may contact WSDOT's Title VI Coordinator at (360) 705-7098.

The preceding legal notice was advertised in the following newspaper on the date noted:

- *Tacoma News Tribune* on January 19, 2010

NOTICE OF AVAILABILITY OF SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL HEARING AND OPEN HOUSE
I-5, M Street to Port of Tacoma Road HOV Projects

The Federal Highway Administration (FHWA) and Washington State Department of Transportation (WSDOT) will issue a Supplemental Environmental Assessment (EA) on July 31, 2009, for three I-5 HOV projects that extend about 3.9 miles between M Street and Port of Tacoma Road. This notice and environmental hearing provide the community an opportunity to exchange information with WSDOT on community effects from the proposed projects. This purpose is in accordance with and pursuant to the National Environmental Policy Act (NEPA) and the Federal Highway Act (Title 23 U.S.C. 101 et seq.) and amendments.

WSDOT proposes building HOV lanes on I-5 in three projects in the cities of Tacoma and Fife, in northern Pierce County, to increase mobility, improve safety, and reduce congestion. Specifically, WSDOT proposes to construct southbound and northbound HOV lanes, improve ramp alignments, add auxiliary lanes, reconstruct the Puyallup River Bridge, and widen and seismically retrofit some of the bridges on I-5. Additionally, WSDOT will upgrade stormwater collection and treatment facilities. The project will result in additional impervious surface, with effects to wetlands, streams, floodplains, vegetation, and wildlife. There will also be an increase in noise. WSDOT will mitigate for these effects as appropriate.

Environmental Hearing and Open House

WSDOT invites the public to attend an environmental hearing and open house to learn more about the projects and provide written and verbal comments on the Supplemental Environmental Assessment (EA).

The environmental hearing and open house will be held from 4 p.m. to 7 p.m. on August 18, 2009, at Lincoln High School, 701 South 37th Street, Tacoma, WA 98418. Plans, maps, environmental documents, and other project information will be on display. Interpreters speaking Spanish, Vietnamese, Korean, and Russian will be at the meeting to help facilitate communication.

The public may also comment on the Supplemental EA via e-mail, internet or fax. Written comments not received at the environmental hearing and open house must be postmarked or sent by August 31, 2009 to be included in the official public record and considered by project administrators. Project questions and comments should be submitted in writing to the

WSDOT Tacoma/Pierce County HOV Team Environmental Manager, Carrie Berry, at:

Mail: 724 Quince Street SE, Suite 206
Olympia, WA 98501

Email: berryc@wsdot.wa.gov

Interested persons may also view the Supplemental EA document and appendices on or after July 31, 2009 at:

- WSDOT Tacoma/Pierce County HOV Project Office (address above)
- The following Pierce County libraries: Gig Harbor/Peninsula; Lakewood; Parkland/Spanaway; Milton/Edgewood; South Hill and University Place; Tacoma Library (downtown location) in the Local Tacoma Northwest Reference Section
- Fife City Hall
- WSDOT Tacoma/Pierce County HOV Program website (http://www.wsdot.wa.gov/projects/piercecountyHOV/)

Lincoln High School is accessible to persons with disabilities. Individuals requiring reasonable accommodation may request written materials in alternative formats; large print, Braille, cassette tape, or on computer disk, please call (360) 705-7097. Persons who are deaf or hard of hearing, please call the Washington State Telecommunications Relay Service, or Tele-Braille at 7-1-1, Voice (800) 833-6384, and ask to be connected to (360) 705-7097.

FHWA and WSDOT ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally-assisted programs and activities. For questions regarding WSDOT's Title VI Program, you may contact WSDOT's Title VI Coordinator at (360) 705-7098.

The preceding legal notice was advertised in the following newspapers on the dates noted:

- *Tacoma News Tribune* on Sunday, July 19, 2009; Sunday, July 26, 2009; and Sunday, August 2, 2009
- *Tacoma Weekly* on Wednesday, July 16, 2009; and Thursday, July 23, 2009
- *Fife Free Press* on Wednesday, July 16, 2009
- *Milton-Edgewood Signal* on Wednesday, July 16, 2009

ATTACHMENT C

FONSI Distribution List

FONSI Distribution List

To promote communication and interagency coordination, we acknowledge that this FONSI is a public document that has involved the public, agencies, and tribes in implementing NEPA procedures. The FONSI was sent to the following government agencies, tribes, organizations, and elected officials:

Federal Agencies

U.S. Advisory Council of Historic Preservation
U.S. Army Corps of Engineers
U.S. Department of the Interior, Fish and Wildlife Service
U.S. Department of Transportation, Federal Transit Administration
U.S. Environmental Protection Agency, Region 10
U.S. Federal Highway Administration
U.S. Department of Commerce, National Marine Fisheries Service

Tribal Governments

Confederated Tribes and Bands of the Yakama Nation
Muckleshoot Indian Tribe
Nisqually Indian Tribe
Puyallup Tribe of Indians
Snoqualmie Indian Tribe
Squaxin Island Tribe

State Agencies

Washington State Department of Archaeological and Historic Preservation
Washington State Department of Ecology
Washington State Department of Fish and Wildlife
Washington State Department of Natural Resources
Washington State Office of Attorney General
Washington State Patrol
Washington State Utilities and Transportation Commission

Local Agencies

Karla Kluge, Building and Land Use Services, City of Tacoma
Scott Sissons, Pierce County Planning and Land Services
Puget Sound Action Team
Puget Sound Clean Air Agency
Puget Sound Regional Council

Elected Officials

U.S. Senators

Maria Cantwell
Patty Murray

U.S. House of Representatives (Congressmen)

Jay Inslee, 1st Congressional District
David G. Reichert, 8th Congressional District
Adam Smith, 9th Congressional District

Washington State Senators

Debbie Regala, 27th District
Jim Kastama, 25th District

Washington State House of Representatives

Bruce Dammeier, 25th District
Dawn Morrell, 25th District
Jeannie Darneille, 27th District
Dennis Flannigan, 27th District

Local

Bill Baarsma, Mayor, City of Tacoma
Barry Johnson, Mayor, City of Fife
Judy Doremus, Port Clerk, Port of Tacoma
Pat McCarthy, Pierce County Executive

Commentators to the Supplemental Environmental Assessment

Ms. Jori Adkins
Cindy Beckett
Ken S. Berg, United States Fish and Wildlife Service
Ms. Carole Braaten
Mary Coleman, Washington State Department of Ecology
Samual Iwenofu, Washington State Department of Ecology
John Lewis
Mr. John Pellisier
William Swigart
Douglas Tooley
Roberta Woods, Washington State Department of Ecology

ATTACHMENT D

Mitigation Commitment List

Mitigation Commitment List

This attachment describes mitigation commitments. The mitigation commitments are organized by elements of the environment as presented in the supplemental EA. These commitments were included in the July 31, 2009, supplemental EA as *Chapter 5. Summary of Proposed Mitigation Measures*. Following the issuance of the supplemental EA, WSDOT finalized mitigation commitments for effects to fish habitat and tribal fisheries through coordination with the Puyallup Tribe of Indians—the Fish section of this mitigation commitment list has been revised to reflect these commitments. These changes are notated in Attachment A of this document: *Errata to Supplemental Environmental Assessment*.

These commitments have been adopted as part of FHWA's final decision on the proposed project. They are listed to "assist with agency planning and decision-making" and to "aid an agency's compliance with NEPA when no Environmental Impact Statement is necessary" [40 CFR 1501.3(b) and 1508.9(a)(2)].

List of Commitments Identified in the Supplemental EA

WSDOT has well established design and construction practices for avoiding or minimizing impacts resulting from environmental conditions anticipated along the project alignment.

The following sections describe the established design and construction practices that WSDOT will implement to avoid or minimize impacts to the various environmental resources during the construction and operation phases of the project.

Measures for Air Quality

- WSDOT will incorporate construction best management practices into the construction specifications for the HOV Program to control particulate matter and emissions. Construction best management practices could include taking steps to reduce dust and to keep dirt from being tracked onto adjacent roadways, planting vegetative cover as soon as possible after grading, requiring appropriate emission-control devices on all construction equipment, and limiting heavy equipment idling.

Measures for Communities, Businesses, Public Services and Utilities

- WSDOT will compensate at fair market value the acquisition of any parcels for use as right of way or for mitigation.

- WSDOT will provide relocation assistance to displaced residences and businesses. The acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and relocation resources will be made available to all relocated individuals without discrimination.
- WSDOT will use the project website, send out newsletters providing information about the projects, and provide contact numbers where residents can voice their concerns.
- WSDOT will require contractors to keep equipment in good mechanical condition and equip engines with mufflers to minimize exhaust emissions and noise.
- WSDOT will clearly identify and mark alternative routes for pedestrians and bicyclists, and the locations for temporary transit stops, and ensure they are accessible for users with disabilities.
- WSDOT will work with business owners to reconfigure or provide alternate access during construction.
- WSDOT will post signs to alert travelers of traffic circulation changes.
- WSDOT will conduct pile driving activities only during the period between 1 hour before sunrise and 1 hour after sunset, to reduce the potential for noise effects on sensitive human receptors.
- WSDOT will limit heavy equipment idling and employ dust-control measures to minimize the adverse construction effects on air quality.
- WSDOT will minimize traffic lane closure, shifting, and rerouting to minimize potential effects on land use decisions in the area.
- WSDOT will provide the fire department, police departments, school districts, and other service providers with advance notice of construction schedules to allow for coordination and to minimize the effects of road and lane closures on response and travel times.
- WSDOT will notify and coordinate with the fire department and water utilities if any waterline relocations or shutdowns are required that might affect water supply for fire suppression, and establish alternate supply lines prior to any break in service.
- WSDOT will notify and coordinate with the Tacoma and Fife police departments, the Washington State Patrol, and the Puyallup Tribe of

Indians police to ensure adequate staffing during construction for traffic control.

- WSDOT will schedule construction during off-peak travel hours, whenever possible and consistent with the traffic management plan (see transportation mitigation measures), to minimize traffic congestion during peak travel hours.
- WSDOT will verify the exact locations and depths of underground utilities prior to construction.
- WSDOT will coordinate with utility providers to consider the location of utilities during detailed design to avoid or minimize conflicts; disruptions of service; and restrictions on access, maintenance, and repairs during construction.
- WSDOT will notify area businesses and residents of utility interruptions, if any are required, by providing a schedule of construction activities.

Measures for Water Resources

- WSDOT will implement a temporary erosion and sediment control plan (including water quality monitoring) and a spill prevention, control, and countermeasures plan during construction.
- WSDOT will implement a Puyallup River water quality protection plan for approved in-water construction activities associated with storm water outfall construction and bridge construction and demolition.
- WSDOT will install storm water flow control (detention ponds) and treatment facilities (media filter drains and wet ponds) to prevent adverse effects on drainage systems and receiving water bodies over the long term after construction.
- WSDOT will create compensatory flood storage volume within the 100-year floodplain of the Puyallup River and/or the Clear Creek valley that floods in conjunction with Puyallup River flooding to offset the volume of fill placed within regulated floodplain areas within the project limits.
- WSDOT will provide mitigation for wetland impacts at a mitigation site in the lower Puyallup subbasin.
- WSDOT will construct a new storm water outfall pipe to the Puyallup River to divert I-5-related flows from the city of Tacoma's drainage system in this area.

- WSDOT will construct a storm water detention pond or ponds for drainage flowing into the Thea Foss Waterway to meet the flow requirements of WSDOT and the city of Tacoma.
- WSDOT will construct permanent water quality treatment facilities to treat storm water runoff from an area at least equal to the area of 22.7 acres of new impervious surfaces (100 percent treatment of new impervious surfaces).
- WSDOT will provide additional treatment, where opportunities for retrofit treatment are feasible, for up to 77.7 acres of exiting highway surfaces where no treatment exists (up to 300 percent treatment of new impervious surfaces).

Wetlands

- WSDOT will provide compensatory mitigation in the lower Puyallup subbasin for unavoidable effects to the wetlands and wetland buffers using current available federal, state, and local agency guidance and permit requirements.
- WSDOT will monitor compensatory mitigation wetlands for 10 years after initial acceptance of the mitigation construction, consistent with an approved monitoring plan.

Fish

- WSDOT will implement the minimization measures, terms and conditions specified in the Endangered Species Act Section 7(a)(2) biological opinion issued in March 16, 2009, and as clarified by the NMFS on April 24, 2009.
- WSDOT will implement the essential fish habitat conservation recommendations, pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, that are identified in FHWA's required response letter [50 CFR 600.920(j)(1)] to the Services on April 13, 2009.
- WSDOT will implement construction techniques that minimize turbidity effects to comply with state and Tribal water quality standards for approved in-water work within the Puyallup River.
- WSDOT will implement best management practices as specified in the temporary erosion and sediment control plan for the projects to prevent sediments from entering the Puyallup River and other water bodies within the study area.

- WSDOT will implement best management practices as specified in the spill prevention, control, and countermeasures plan for the projects to prevent contaminants from entering the Puyallup River and other water bodies within the study area.
- WSDOT will manage wastewater and water removed from the work area during construction, route wastewater and water removed from the work area to an upland area, contain it to remove suspended sediments, and prevent their discharge directly into the Puyallup River and other waterbodies in the study area until turbidity is at or below background conditions. The flow rate of returned water to streams will not exceed one-tenth of the natural flow rate of the stream at the time of discharge.
- WSDOT will dispose of materials that have been treated with creosote, if found, according to Section 173-304-190 of the Washington Administrative Code.
- WSDOT will comply with conditions listed in the NPDES permit for *Washing and Pressure Washing of Bridges and Ferry Terminals* during the dismantling of the existing bridge.
- WSDOT will repair riparian vegetation after the existing bridges over the Puyallup River have been removed.
- WSDOT will replant sites disturbed by project activities, where possible, with native vegetation.
- WSDOT will implement replanting activities during appropriate times of the year to maximize the establishment of plants before flood events.
- WSDOT will comply with the Standard WSDOT Fish Handling Protocols to minimize the effects associated with fish removal or relocation during construction.
- WSDOT will use a cofferdam in the vicinity of the new storm water outfall to the Puyallup River to reduce the potential for adverse effects on fish.
- WSDOT will conduct dewatering in cofferdam enclosed exclusion area in two to three stages, pausing between stages to accommodate fish removal.
- WSDOT will use vibratory pile installation methods to the extent practicable to install piles associated with the temporary work trestles.

- WSDOT will use an approved noise attenuation system consisting of a confined bubble curtain or any functionally equivalent or superior system.
- WSDOT will install temporary large-diameter cylindrical casings before drilling support shafts in the Puyallup River to protect the environment against potential spills during the use and placement of slurry and concrete, and to reduce turbidity effects.
- WSDOT will conduct approved in-water work activities during the July 15-August 31 in-water work window to reduce the potential for adverse effects on fish.
- WSDOT will implement methods where possible during pile removal to minimize localized turbidity.
- WSDOT will use a containment boom during pile removal and bridge expansion to collect any floating debris and sheen.
- WSDOT will create off-channel fish habitat in a tributary to the Puyallup River.
- WSDOT will limit the amount of time that temporary work trestle structures in the Puyallup River are in place to the minimum necessary.
- WSDOT will use untreated wood for decking on temporary work trestle structures in the Puyallup River.
- WSDOT will install storm water flow control (detention ponds) and treatment facilities (media filter drains and wet ponds) to prevent adverse effects on drainage systems and receiving water bodies over the long term after construction
- WSDOT will construct permanent water quality treatment facilities to treat storm water runoff from an area at least equal to the area of 22.7 acres of new impervious surfaces (100 percent treatment of new impervious surfaces). Where opportunities for retrofit treatment are feasible, provide additional treatment for up to 77.7 acres of exiting highway surfaces where no treatment exists (up to 300 percent treatment of new impervious surfaces).
- WSDOT will incorporate incidental infiltration into the storm water management plan for as much precipitation and storm water runoff as possible to replicate existing conditions.

- WSDOT will create compensatory flood storage volume within the 100-year floodplain of the Puyallup River and/or the Clear Creek valley that floods in conjunction with Puyallup River flooding to offset the volume of fill placed within regulated floodplain areas within the project limits.
- WSDOT will provide mitigation for wetland effects at a mitigation site in the lower Puyallup subbasin.
- WSDOT will limit nighttime lighting to the minimum necessary for the intended purpose, in terms of both intensity and the area of illumination to minimize effects to fish.

Wildlife and Vegetation

- WSDOT will install fencing around vegetation to be protected during construction.
- WSDOT will discourage birds from nesting on temporary and permanent bridge structures.
- WSDOT will enhance riparian habitat south of the proposed Puyallup River bridges, as allowed by regulation of the levee area, by removing nonnative vegetation and replanting a diverse arrangement of shrub tree species.

Hazardous Materials

- WSDOT will prepare project-specific contingency plan(s) for hazardous materials and contaminated media. The project contingency plan(s) will include procedures in accordance with regulatory requirements for proper removal and disposal of underground storage tanks and other related underground features, along with any associated petroleum-contaminated soil left in place around the tanks and systems that may be encountered during construction. These issues may be addressed through the Spill Prevention Control and Countermeasures Plan. The plan will include:
    - Identification of responsible personnel
    - Notification requirements
    - Management procedures for contaminated media and containers
    - Soil stockpiling and containment requirements
    - Water storage, containment, and discharge requirements
    - Measures to limit release and spreading of contaminated media
    - Monitoring and transport requirements
    - Treatment or disposal options and requirements for contaminated media

- WSDOT will identify, locate, and mark all underground utilities within the project limits before excavation begins.
- WSDOT will perform a comprehensive survey before demolition of structures to identify and assess quantities of hazardous building materials (for example, asbestos-containing materials and lead-based paint) to allow for proper removal and disposal.
- WSDOT will prepare a project-specific worker and public health and safety plan would be prepared to specify procedures and requirements for minimizing risk of airborne and direct contact exposure of hazardous materials to construction workers and the public, and spreading contamination into the surrounding environment. This plan will include the following:
    - Requirements for increased construction-zone setbacks, additional barriers to public access, and prompt removal of contaminated materials
    - Training of construction workers on handling hazardous materials, along with contingency planning for contaminated media and secondary containment of hazardous materials
    - Procedures for handling unlabeled drums and containers that may be encountered during construction
    - Inspection of bridges located within the project limits before construction begins to determine whether bird or bat excrement is present and allow time for its proper removal and disposal before demolition

Noise

- WSDOT will reduce construction noise where feasible by using shields around noisy equipment, installing mufflers on engines, substituting quieter equipment or construction methods, minimizing time of operation, and locating equipment farther from sensitive receivers.
- WSDOT will conduct pile driving activities only during the period between 1 hour before sunrise and 1 hour after sunset, to reduce the potential for noise effects on sensitive human receptors.

Visual Quality

- WSDOT will minimize nighttime construction activities, when feasible, to reduce light pollution and glare for users of the I-5 corridor and the surrounding area.

- WSDOT will limit the use of construction detours.
- WSDOT will minimize the removal of vegetation within the project limits.
- WSDOT will apply the guidelines, when feasible, specified in the *Architectural and Roadside Aesthetic Standards, M Street to Portland Avenue (P2–P4) Conceptual Landscape Planting and Aesthetics Report*, and the *Portland Avenue to Port of Tacoma Interchange (P3-P5) Conceptual Landscape Planting and Aesthetics Report*.
- WSDOT will install a new lighting system that meets approved standards.
- WSDOT will work with the city of Tacoma on potential architectural wall treatment options.
- WSDOT will install signage as outlined in the *Architectural and Roadside Aesthetic Standards*.

Historical, Cultural, and Archaeological

- WSDOT will consult with the Puyallup Tribe and the Department of Archaeology and Historic Preservation to identify mitigation measures to eliminate the adverse effect to the 45PI930 site due to its recommended eligibility to the National Register of Historic Places as a prehistoric archaeological site. Mitigation measures could include engineering design modifications, relocation of project-related activities, compensatory mitigation, data collection or other appropriate mitigation measures that would be determined through consultation.
- WSDOT will develop a Memorandum of Agreement between the Washington State Historic Preservation Officer, U.S. Army Corps of Engineers, the Puyallup Tribe, FHWA, and WSDOT to address the adverse effects to the recorded archeological site(s) and mitigation specific to the proposed stormwater outfall and the selected wetland and floodplain mitigation site.
- WSDOT will monitor construction activities below approximately 2 meters (6.5 feet) depth at three locations near the Puyallup River, due to high probability for cultural resources beneath fill material.

Transportation

- WSDOT will develop a traffic management plan to minimize disruptions to existing traffic flow during construction.

- WSDOT will advise the public, school districts, and emergency service providers of traffic detours prior to implementing the detours, using a public information process.
- WSDOT will provide temporary lane configurations to keep traffic moving and apply traffic management strategies to reduce the adverse effects of congestion.

Geology and Soils

- WSDOT will use ground-improvement methods, where possible, to reduce excessive vertical and lateral ground movement.
- WSDOT will contain grout and/or earth spoils and excess water produced by ground-improvement methods.
- WSDOT will relocate or protect utilities where ground settlement cannot be mitigated.
- WSDOT will design slopes to maintain factors of safety prescribed by the AASHTO code.
- WSDOT will specify to the contractor that equipment be selected and operated to minimize the potential for vibration.
- WSDOT will reprocess concrete into aggregate to the extent practicable to minimize waste.
- WSDOT will control artesian groundwater conditions in excavations for the drilled shafts.

ATTACHMENT E

Comments and Responses

Comments and Responses

In this attachment, we provide written comments (via e-mails, and letters), and oral comments (testimony recorded during the August 18, 2009, public hearing) in the order they were received. Comments have been copied in their entirety and demarcated using alpha-numeric indicators (see index below). WSDOT's corresponding responses follow the e-mails, letters, and public hearing transcript of testimony.

The e-mails, letters, and oral testimony provided during the public comment period (July 31-September 17, 2009) contain a total of 50 comments. Of the 50 comments, 19 are related to traffic and design. Other comments that occurred more than once included five comments related to water resources—one related to stormwater runoff, and four comments related to project activities within the floodplain; nine comments regarding hazardous materials; six comments were related to fish, wildlife, and fish and wildlife habitat; and five were specific to wetlands.

Index to Comments and Responses

EC= E-mail Comments
LCA = Letter Comments (from Agencies)
OC=Oral Comments (given to court reporter at the hearing)

E-mail Comments

E-mail 1

From: bs9@mac.com [mailto:bs9@mac.com]
Sent: Wednesday, August 19, 2009 7:07 PM
To: Berry, Carrie
Subject: I have a comment about WSDOT's Supplemental Environmental Assessment on proposed I-5 projects through Tacoma.

Sent from: William Swigart
Address: 2319 S. Wilkeson St.
City: Tacoma
State: WA
County: Pierce County
Zip: 98405
Email: bs9@mac.com
Phone: 206 328-2288

Comments:

EC 1-1 Hello, On the southbound I-5 lanes where Pacific Ave along with SB I-705 lanes merge what is the proposal for those lanes merging with the traffic heading to eastbound SR16? Will we end up with the same kind of lane switching that currently exists on the N.V. Viaduct that will be mitigated with the new construction there, thereby just creating another merging mess? Or will there be vehicle sorting prior to merging into southbound I-5 or eastbound SR16, which I hope that there will be! Thank you, Bill Swigart Central Tacoma Resident

E-mail from William Swigart to Carrie M. Berry on August 19, 2009

Response to EC 1-1

The design of the new westbound Nalley Valley structure will reduce merging for drivers approaching the new westbound viaduct and on the new viaduct itself. Whether it will eliminate the 'lane swapping' you asked about depends on where drivers are and where they are headed.

For example, when the new westbound viaduct opens in 2011:

- Drivers going southbound on I-705 toward I-5 and onward to westbound SR 16 will no longer have to merge onto southbound I-5. They will be able to make that connection directly without having to merge.
- Drivers going from southbound I-5 to westbound SR 16 still will need to merge right to make that connection.
- Drivers going from both northbound and southbound I-5 to Sprague Avenue will have direct ramp connections, eliminating the merge on the existing westbound viaduct.
- Drivers going southbound on I-705 to southbound I-5 still will need to merge left to make that connection.

E-mail 2

From: BS9 [mailto:bs9@mac.com]
Sent: Friday, August 21, 2009 1:11 PM
To: Cornish, Claudia
Subject: RE: I have a comment about WSDOT's Supplemental Environmental Assessment on proposed I-5 projects through Tacoma.

EC 2-1 I think you answered the question. That's too bad that there won't be some over/under passes for the I-705 Eastbound merging to Southbound I-5 thereby eliminating that heavy lane swapping that the thousands of vehicles will have to do to hit the SR16 Westbound exit lanes....doing so should certainly and most definitely be a part of the plan, I drive this multiple times a day and it's already a problem at times.

E-mail from William Swigart to Claudia Cornish on August 21, 2009

Response to EC 2-1

The added capacity you are requesting is beyond the scope and financial resources available to WSDOT.

E-mail 3

From: Douglas Tooley [doug@motleytools.com]
Sent: Saturday, August 29, 2009 7:15 AM
To: Berry, Carrie
Cc: Cornish, Claudia
Subject: Tacoma HOV NEPA Procedurals - Missing information/Misc. Legal/Professional

Date: August 29, 2009

To: Carrie Berry, Tacoma HOV Environmental Coordinator

CC: Claudia Cornish, Communications Manager

RE: **Tacoma/Pierce County HOV Program Supplemental Environmental Assessment**

The following comments go to procedural issues concerning your current Tacoma HOV environmental review. My substantive comments will follow shortly.

EC 3-1 I have received and preliminarily reviewed the IJR report for the Tacoma HOV projects. I had assumed that a report describing the WSDOT analyses direct access HOV ramps for Freighthouse Square and Downtown Tacoma would be included, apparently incorrectly.

EC 3-2 Additionally appendix 'E', the Wetland and Stream assessment is missing from both the distributed CD and the website for the NEPA assessment. Lastly, please note that although I have lay qualifications read the environmental appendices associated with this project there is too much material to reasonably review in the time allotted.

EC 3-3 I am also concerned about the timing of the review of State environmental procedures. Though I have not confirmed exact dates ***it does appear that the determination of non-significance was issued concurrently with Governor Gregoire's budget delaying the project funding beyond available monies*** – hopefully not with the intent of pressuring local governments to accept the SEPA findings. Most significantly SEPA allows for greater analysis of alternatives than does the NEPA and the project plan has substantial gaps in this regard. Similarly, the ten years that have elapsed since original planning, design and review was done limit the relevance of current documents.

EC 3-4 On a similar note I consider the ***actions of the City of Tacoma insufficient in regards to feedback on this project***. I understand that the cause of this is poor funding, but that may also be bad budgetary judgment on the part of those that control this City. In any case it would best if it was clear WSDOT encouraged active involvement in project planning and avoid any appearance of the opposite. *I have noticed that WSDOT has ample staff and would suggest consideration of assigning some of this funding to local jurisdictions to fund their participation.*

EC 3-5 You may *be aware that there are currently personal accusations floating around regarding my behavior in civic issues related to this matter.* Please be assured that these are false. Please be **warned** that *I allege these to be intentional with the intent to control public expenditures through techniques which amount to second degree extortion, even if executed under apparent legal authority.*

I have been subject to and used in such a manner for a period of 20 years that has resulted in my current disabled status. This does allow me the time to review these projects but also limits my ability to respond. The exact delineation between these disabling effects and the extortionary harassment creating some has not yet been determined.

Please note that although I do not comment for any organization I do believe I have established informal relations with all groups that do have an interest in this project and should be aware of all public position statements that would effect

E-mail from Douglas Tooley to Carrie M. Berry on August 29, 2009

Response to EC 3-1
Analysis of direct access ramps is beyond the scope of this project and they were not included in the proposed projects that are evaluated in this supplemental EA. WSDOT considered the potential for transit direct access ramps and the associated construction impacts to I-5. Transit direct access was determined to be infeasible as this would result in loss of existing facilities at or near the Tacoma Dome, realignment of city streets, revision of local traffic circulation, acquisition of additional right of way, significant cost increases, increased environmental impacts to sensitive areas, and an extended construction schedule.

Response to EC 3-2
The first on-line posting of the supplemental EA on July 31, 2009 did not include Appendix E, which covers wetlands. Although NEPA guidelines do not require inclusion of all appendices to the supplemental EA during the public comment period, it was WSDOT's intent to do. The on-line supplemental EA with complete appendices was reposted on September 1, 2009, and WSDOT extended the public comment period through September 17, 2009. The supplemental EA is available for viewing (http://www.wsdot.wa.gov/projects/piercecountyHOV/).

Response to EC 3-3
The timing of the SEPA determination was based on meeting the project schedule.

WSDOT prepared a supplemental EA and implemented a public process to inform the public and agencies of changes in the project design and environmental effects since publication of the 1999 Environmental Assessment. The public comment period was July 31, 2009, through September 17, 2009, and a public hearing on the Supplemental Environmental Assessment was held August 18, 2009. Copies of the Supplemental Environmental Assessment were available on the WSDOT website, at the public meeting, local libraries, and public agencies.

Response to EC 3-4
Comment is outside the authority of WSDOT.

Response to EC 3-5
Comment noted.

E-mail 3 (cont'd)

EC 3-5 this project. As an individual I can hopefully address all of these concerns in a balanced fashion, though at definite risk of retaliation from polarized special interests.

Please note I also have an associated professional interest in this matter – as a GIS professional I found that responsible community involvement was a great way to obtain the level of knowledge needed to effectively manage geographic data in the public interest – an area where I **was** a State pioneer.

I am currently seeking to re-establish that career as well as gain recompense for the damages that have been done to that career over 15-20 years per the above. It is my perception that WSDOT has the organizational ability to withstand at least some of these pressures, albeit at the expense associated with large organizations.

It is my belief that my flexibility as an individual can strengthen the effectiveness of WSDOT practices and all that they impact and look forward to a continued association – perhaps even as part of my return to the GIS profession. At this time though I am strictly a solo practitioner within that field and very much out of date regarding technical practice.

Lastly, the City of Tacoma through its Police Department has begun a pioneering effort at creating a 'code of conduct' for our community. As a document on the shelf this will not mean much, cognizance of the conversation will mean much and would encourage the familiarity of this to you Ms. Berry as well as Ms. Cornish.

http://www.cityoftacoma.org/Page.aspx?nid=894

-Douglas Tooley

2

E-mail from Douglas Tooley to Carrie M. Berry on August 29, 2009 (continued)

Response to EC 3-5 (continued)
(see previous page of responses)

E-mail 4

From: Douglas Tooley [mailto:doug@motleytools.com]
Sent: Monday, August 31, 2009 7:15 AM
To: 'Douglas Tooley'; Berry, Carrie
Cc: Cornish, Claudia; lkeithstone@comcast.net; Nedrow, T. J.; cindybecket@gmail.com; 'Puget Creek Restoration Societ'; 'David Whited'; 'Griffith, Allyson'; aohanlon@cityoftacoma.org; cott@cityoftacoma.org; rollie@westpacmarine.com; 'Marty Campbell'; 'James Merritt'; bobmyrick@msn.com; kkluge@cityoftacoma.org; JPARVEY@ci.tacoma.wa.us; dboe@boearc.com; dbrown2@cityoftacoma.org; KKingsol@ci.tacoma.wa.us; main@soundtransit.org; Reuben.McKnight@ci.tacoma.wa.us; KKingsol@ci.tacoma.wa.us; ChelseaL@tacomachamber.org; david@schroedelplanning.com; 'Art-Support'; architect@mcintire.com; 'Peter Callaghan'; ricksemple@mac.com; 'Hayes, Roland (Bert)'; bmccutchan@ci.tacoma.wa.us; 'Walker, Cathy (MIL)'; 'Derek Young'; david.zeeck@thenewstribune.com; 'Darrell E. Bowman'; 'Wiatr, Diane'; elliott.barnett@cityoftacoma.org; eric.anderson@cityoftacoma.org; Feet_First@mail.vresp.com; Turner, Joe (TNT); main@soundtransit.org; mrose@cityoftacoma.org; 'McKinley Hill Business District MHBD'; phuffman@cityoftacoma.org; shari.hart@cityoftacoma.org; 'Jeanine Riss'
Subject: Tacoma I-5 HOV Comments

To: Carrie Berry, Environmental Manager I-5 HOV Team

CC: Multiple

Re: Tacoma I-5 HOV NEPA Comments

Some 2 years ago I was walking my dog near my residence, less than 2 blocks from this WSDOT project's stretch of I-5, and noticed the almost natural grading suitable for a bike trail on the recently completed I-5 projects just to the South. As such I was inspired to restart my civic involvement starting with the analysis of the feasibility of a local connector bike trail at the periphery of I-5 between S. 38th Street and McKinley Avenue.

Presidents Ridge Bike/Pedestrian Trail

EC 4-1

This trail concept was added to the Tacoma Comprehensive plan last year, preliminarily called 'Presidents Ridge' for the 3 neighborhoods it would connect, Lincoln, McKinley, and Roosevelt.(Citizen Graphic Attached) Funding for this project should come from local sources, however there are critical design and legal issues that should be addressed in the scope of this project – including one minor modification to the Pacific Avenue Bridge design, a shelf on the highway median under the bridge to accommodate trail construction.

EC 4-2

The alignment for this trail is proposed at roughly the boundary of the controlled access area. It would be **nice** if this alignment could be justified as a maintenance access road within the scope of your current project. In any case a legal review of this route is appropriate at this time. Please note that alternative routings do exist and that these might be preserved in any enabling documents – and that any possible need for modification likely extends beyond the 2030 analysis envelope.

E-mail from Douglas Tooley to Carrie M. Berry on August 31, 2009

Response to EC 4-1

The proposed Pacific Avenue bridge design is in accordance with current WSDOT and City of Tacoma standards for pedestrian and bicycle traffic. The proposed Pacific Avenue bridge includes both a paved bike lane and a 7-foot concrete sidewalk. WSDOT consults with the City of Tacoma to determine if bike and pedestrian trails can be accommodated on WSDOT right of way.

Response to EC 4-2

The expansion of I-5, for the addition HOV lanes, included revision to local streets within WSDOT right of way. New construction of local streets includes proposed bike lanes and/or sidewalks that are in accordance with WSDOT and local municipal design standards.

WSDOT consults with the City of Tacoma to determine if bike and pedestrian trails can be accommodated on WSDOT right of way.

E-mail 4 (cont'd)

Pacific Avenue/Dome District Interchange/Access Point Design

EC 4-3 The study of the Pacific Avenue interchange is completely missing from all project documents available to the commenter. This interchange is admittedly 'supplementary' to the I-705 access system which overshadows it, but is nonetheless still important. For framing purposes I have added access to the Tacoma Dome and Dome Business District to the suggested scope of this needed analysis. Since 1999 the 34th and Pacific area has been designated for additional density, something that will realistically occur within the temporal envelope of this analysis, as will substantial redevelopment of the Dome District itself.

EC 4-4 I believe that left turn access should be provided from Pacific to both the North bound ('A' Street) and South bound ramps – this can be justified via transportation, environmental justice, and social/economic arguments.

EC 4-5 Sound Transit has proposed blocking off one of these access points for its Sounder Lakewood extension as part of their 'Berm' proposal, the intersection of 'A' Street and 26th. I believe this ST proposal requires access modification approval and this process provides a timely way to accomplish that review. Please note also that additional delay of this ST project may have construction timing impact benefits should the two disruptions of Pacific Avenue overlap. The benefits of this overlap should be studied.

EC 4-6 I also believe an additional off ramp should be provided just to the North of McKinley Avenue providing direct access to Tacoma Dome parking, mitigating on street congestion created through existing in-direct routes. I also believe it **may** be feasible to create a northbound on-ramp at McKinley Avenue, depending in large part upon neighborhood opinion on the balance of costs and benefits.

EC 4-7 This sub I-705 access area of the Dome District and the 34th and Pacific Mixed Use Center definitely needs further work, including possible additional alternatives. How this particular issue escaped under the radar of both WSDOT and the City of Tacoma is mystifying – I'll chalk it up to vagaries of political negligence and underfunding over a period of decades.

Direct HOV Access to Downtown Tacoma

EC 4-8 Since the 1999 date of the original project configuration direct access HOV ramps have become more of a standard best practice. Their omission from this project is a glaring omission – not providing direct access to the largest employment center in the entire County, as well as residential areas further North, is 'shocking'. Upon my initial review I would suggest a 'Texas T' configuration couplet at Portland (north connecting) and Pacific Avenue (south connecting) during the reconstruction of these interchanges. The McKinley and 'L' street bridges do offer additional opportunities for this absolutely necessary project component. Please note that closure of Wiley would be acceptable, if an additional access point to Dome parking was created.

E-mail from Douglas Tooley to Carrie M. Berry on August 31, 2009 (continued)

Response to EC 4-3
Analysis of an interchange at Pacific Avenue is beyond the scope of this project. The purpose of the Tacoma/Pierce County HOV Program is to enhance the mobility of people, goods, and services within the HOV Program corridor by adding HOV lanes along mainline I-5, from M Street through the Port of Tacoma interchange. Additional access to I-5 was not considered.

Response to EC 4-4
The purpose of the Tacoma/Pierce County HOV Program is to enhance the mobility of people, goods, and services within the HOV Program corridor by adding HOV lanes along mainline I-5, from M Street through the Port of Tacoma interchange. Improvements to local streets, including Pacific Avenue, that are unaffected by the widening of I-5 for HOV lanes are beyond the scope of this project. Available access between I-5 (north and south) and Pacific Avenue continues through use of local routes.

Response to EC 4-5
Modifications to the intersection of A Street and S 26th Street are beyond the scope of this project.

WSDOT works together with the City of Tacoma, Sound Transit, and other local agencies to coordinate roadway closures and promote public safety and convenience.

Response to EC 4-6
See E-mail 3, response EC 3-1.

Response to EC 4-7
The projects included in the supplemental EA are the construction of HOV lanes along mainline I-5 from M Street through the Port of Tacoma interchange. Additional improvements and access to surrounding areas are not within the scope of this project.

Response to EC 4-8
See E-mail 3, response EC 3-1.

E-mail 4 (cont'd)

Compatibility of Design With Expedited Sound Transit Link Completion

EC 4-9 With the passage of Sound Transit 2 last Fall completion of the north Link connection is possible within the 2030 temporal envelope of this analysis. At this point the current alignment is thought to be along the I-5 corridor from the Federal Way Transit Center at 317th. This may not be feasible from the Port of Tacoma road south. A final decision cannot likely be made on this issue at this time, however a preliminary determination of inappropriate access might be issued. Alternatively, the HOV and light rail system could be designed for joint operation as in the Seattle Bus Tunnel. The limits of this joint operation are not understood at this time, but should be relatively soon, just as direct access HOV practice has evolved.

EC 4-10 Toward that end I have attached a conceptual proposal for a direct access HOV/light rail alignment that accesses both the Puyallup Tribal areas and Downtown/North Tacoma (Dome Transit2.Pdf). Costs on this proposal would be high and would not be expected to occur at this time for either project component, however corridor design should be accommodated, even if it means closing Wiley Street or taking a small amount of additional land from McKinley Park.

Wetland/Flood Plain Mitigation

EC 4-11 Mitigation alternatives for this project are incomplete through the omission of a First Creek mitigation option within the jurisdiction of the City of Tacoma. It is my understanding that the justification for this decision was based on the potential for salmon habitat in First Creek by the Puyallup Tribe, a valid, but incomplete decision point. Additionally it has come to my attention that additional stream flow to this area is possible and relatively simple from a Ms. Cindy Beckett (email contact above), a property owner in the headwaters of this area just South of Tacoma City limits affected by a historical kludge of aquifer mismanagement. A 'daylighting' of First Creek has additional recreational benefits which should be considered in addition to an updated Salmon habitat study. The final decision on this should be made considering the decision of the Tacoma City Council first. I also believe this alternative may be at less cost, given that the only significant construction item is an additional pipeline under the railway right of way.

Catastrophic Event Analysis

EC 4-12 The construction of Berms along this corridor have strong risk components given the natural path of floodwaters. The First Creek sight is one of these, under the direct control of WSDOT. Sound Transit is proposing another at the 'B' Street gulch which may impact I-5 operations. Both of these gulches would become the target of stormwater from a large area given stormwater system failure from either a massive flood event, or, more likely, seismic event. I'm not sure of the exact legal way to make this argument, especially as stream delineation information is missing from the published document. This may be an area for legal improvement and I would suggest that the project team look at the HAZUS effort of the Federal government which is specifically designed to study many such scenarios.

E-mail from Douglas Tooley to Carrie M. Berry on August 31, 2009 (continued)

Response to EC 4-9
WSDOT will continue to work with Sound Transit on projects within the State right of way. Joining the operation of HOV lanes and light rail is beyond the scope of this project.

Response to EC 4-10
At this time, joining the operation of HOV lanes and light rail is not included within the Tacoma/Pierce HOV Program.

Response to EC 4-11
First Creek (also known as Cley Creek) was considered by WSDOT as a potential mitigation site. WSDOT consulted with local governments and the Puyallup Tribe on potential sites. The Cley Creek site did not meet regulatory agency requirements for adequate compensatory mitigation credits in relation to wetland impacts.

Response to EC 4-12
WSDOT is providing mitigation for stormwater and floodplain impacts and is designing structures to current seismic standards. First Creek (also known as Cley Creek) is not within the WSDOT right of way and the projects will not impact Cley Creek. No additional stream delineation is necessary.

E-mail 4 (cont'd)

EC 4-13

Traffic Camera Placement

Please consider public safety in the placement of traffic cameras so that adjoining 'jungle' areas can be monitored with traffic resources. Please note that this same justification goes to the requested trail access proposal at the beginning of this comment document.

Thanks

Thank you for the opportunity to comment on this project at a time when it is still possible to effect the design based on your environmental analysis. I look forward to the City of Tacoma being served by a state of the art HOV system. If you have any questions, please feel free to contact me via email or at my home:

Douglas Tooley
422 S. Wright Avenue
Tacoma, WA 98418

E-mail from Douglas Tooley to Carrie M. Berry on August 31, 2009 (continued)

Response to EC 4-13

The traffic camera system or closed circuit television (CCTV) provides coverage of WSDOT right of way or facilities. WSDOT uses CCTV to manage the freeway system. The primary function of CCTV is to confirm or detect highway incidents (accidents, disabled vehicles, or disturbances) and current traffic conditions. CCTV is not a traffic law enforcement tool, but information from traffic cameras can be provided to the Washington State Patrol, incident response teams, maintenance forces, and the local media.

The Tacoma/Pierce County HOV Program follows current WSDOT design standards to prevent unauthorized access on State right of way. Coordination efforts continue between WSDOT, Washington State Patrol, and local authorities to deter trespassing along I-5.

E-mail 5

From: John Lewis [mailto:JohnLewis@cbchp.com]
Sent: Monday, August 31, 2009 8:53 AM
To: Berry, Carrie
Subject: FW: Tacoma I-5 HOV Comments

EC 5-1 I concur with Mr.. Tooley's comments and would like to know what WSDOT thinks of their proposed role in all of this.JL

John Lewis - Director of Acquisitions & Development
COLDWELL BANKER COMMERCIAL
1944 Pacific Ave., Suite 310
Tacoma, WA 98402
office (253)383-8800 ext. 15
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Fax (253)779-0363
email JohnLewis@cbchp.com

From: Douglas Tooley [mailto:doug@motleytools.com]
Sent: Monday, August 31, 2009 7:15 AM
To: 'Douglas Tooley'; BerryC@wsdot.wa.gov
Cc: 'Cornish, Claudia'; lkeithstone@comcast.net; nedrowt@wsdot.wa.gov; cindybecket@gmail.com; 'Puget Creek Restoration Societ'; 'David Whited'; 'Griffith, Allyson'; aohanlon@cityoftacoma.org; cott@cityoftacoma.org; rollie@westpacmarine.com; 'Marty Campbell'; 'James Merritt'; bobmyrick@msn.com; kkluge@cityoftacoma.org; JPARVEY@ci.tacoma.wa.us; dboe@boearc.com; dbrown2@cityoftacoma.org; KKingsol@ci.tacoma.wa.us; main@soundtransit.org; Reuben.McKnight@ci.tacoma.wa.us; KKingsol@ci.tacoma.wa.us; ChelseaL@tacomachamber.org; david@schroedelplanning.com; 'Art-Support'; architect@mcintire.com; 'Peter Callaghan'; ricksemple@mac.com; 'Hayes, Roland (Bert)'; bmccutchan@ci.tacoma.wa.us; 'Walker, Cathy (MIL)'; 'Derek Young'; david.zeeck@thenewstribune.com; 'Darrell E. Bowman'; 'Wiatr, Diane'; elliott.barnett@cityoftacoma.org; eric.anderson@cityoftacoma.org; Feet_First@mail.vresp.com; 'Turner, Joe - Tacoma'; main@soundtransit.org; mrose@cityoftacoma.org; 'McKinley Hill Business District MHBD'; phuffman@cityoftacoma.org; shari.hart@cityoftacoma.org; 'Jeanine Riss'
Subject: Tacoma I-5 HOV Comments

To: Carrie Berry, Environmental Manager I-5 HOV Team

CC: Multiple

Re: Tacoma I-5 HOV NEPA Comments

Some 2 years ago I was walking my dog near my residence, less than 2 blocks from this WSDOT project's stretch of I-5, and noticed the almost natural grading suitable for a bike trail on the recently completed I-5 projects just to the South. As such I was inspired to restart my civic involvement starting with the analysis of the feasibility of a local connector bike trail at the periphery of I-5 between S. 38th Street and McKinley Avenue.

[*Go to E-mail 4 to see complete e-mail referenced by John Lewis*]

E-mail from John Lewis to Carrie M. Berry on August 31, 2009

Response to EC 5-1
Comment noted. Please refer to responses to E-mail 4.

E-mail 6

From: Cindy Beckett [mailto:cindybecket@gmail.com]
Sent: Wed 9/9/2009 7:56 PM
To: Berry, Carrie
Subject: RE: Tacoma I-5 HOV Comments

EC 6-1 Hello, I have been reading this dialogue and have a couple of questions if I may. I did ask them at the open house in August, but the engineer I spoke with had no information and was actually a little surprised to learn of this.....

I have done extensive study into the history of the Tacoma Asarco operations, with focus on the contamination of the surrounding area and the nature of that contamination. I'm sure you have read the same documentation. In the early 1900's, prior to having an actual stack or even large chimney, this smelter issued substantial particulates that covered inches deep the nearby business buildings in the original downtown Tacoma, the weight was so great that many of the roofs collapsed. (all of this is found on-line and is verifiable)

The city leaders at that time met with the Asarco management to discuss this issue. A small chimney was erected from the smelter/furnaces, but only served to expand the area below the crest of the hilltop area that now received this heavy dose of particulates. History shows that successive and taller chimneys were erected as the problem persisted until a tall enough one was built that carried these particulates up the hill and away from the immediate downtown area. That was not the tallest stack that we are familiar with, however, which was built later still.

At the same time that this area was quite literally blanketed with this heavy and deadly particulate pollution, many of the old roads were laid also - and since no-one back then had any of the scientific knowledge that we have now, no-one thought anything about laying roads on top of such heavily contaminated soils.. That includes the roads in the area that you are planning to disturb for the transit work.

My question was then and still is, I have found absolutely no reports nor test results of any of the soils under these old roads done by any of the players in this proposal- at all. The engineer told me that the Port was planning to take much of the asphalt away to use as fill for their expansion, yet nothing is said about testing it first for contamination. I was also told that much of the soil under these roads that you plan to tear up will also be taken away to be used as fill. That includes the entire area around Freight House Square, Pacific Ave and several other roads - exactly where much of the contamination was (and still is),

EC 6-2 Coupled with that is the concern about the groundwater that seeps down from the above hills. Once all this area is so greatly disturbed, much of the groundwater will carry this out into the bay then on to Puget Sound with the tides. As we all know, this is the destination water for the endangered Chinook Salmon and Orcas, neither can withstand this kind of contamination. In survival mode, mother Orcas will deliberately pass pollutants and contaminants from their bodies via their milk, to their babies.

EC 6-3 Where will I find the test results from both the old pavement materials and the soils under them? I could ask OSHA or L&I for this, but thought I would start with you, With so many residential neighborhoods around that area and the hospital at the top of the hill, it is inconceivable that this has not been addressed. None of these contaminants must be allowed to become airborne, of course. The results could be horrific for children, the elderly, and anyone with asthma and other breathing illnesses.

Thank you
I await your response
Regards
Cindy Beckett

Email from Cindy Beckett to Carrie M. Berry on September 9, 2009

Response to EC 6-1
Asarco information can be found at the following Washington State Department of Ecology website (http://www.ecy.wa.gov/programs/tcp/area_wide/area_wide_hp.html).

Soil removed for use at other locations will be tested to meet those project's specific construction acceptance criteria.

Response to EC 6-2
Excavation on the hillside is not expected to affect groundwater seepage.

Response to EC 6-3
Asarco information can be found at the following Washington State Department of Ecology website (http://www.ecy.wa.gov/programs/tcp/area_wide/area_wide_hp.html).

Letter Comments

Letter 1

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office
510 Desmond Dr. SE, Suite 102
Lacey, Washington 98503

SEP - 2 2009

In Reply Refer to:
13410-2009-FA-0065

RECEIVED
SEP 0 3 2009
OR HOV Office

Carrie Berry
Washington State Department of Transportation
Tacoma/Pierce County HOV Office
P.O. Box 47376
Olympia, Washington 98504-7376

COPY

Dear Ms. Berry:

This letter is in response to your recent invitation to provide comments on the Interstate 5, M Street to Port of Tacoma Road High-Occupancy Vehicle (HOV) Project Supplemental Environmental Assessment (EA). We appreciate the opportunity to comment on the findings and conclusions included in the Supplemental EA and supporting discipline reports.

This action was the subject of an earlier formal Endangered Species Act (ESA) section 7 consultation with the Federal Highway Administration. A Biological Opinion (Opinion) addressing the action was signed on March 16, 2009 (X.Ref 13410-2008-F-0582).

We offer the following comments and recommendations for your consideration:

LCA 1-1

- The Supplemental EA's description of the proposed stormwater design and potential effects (including benefits) appears consistent with the Opinion. However, because the Opinion addressed three project segments (M St. to Portland Ave.; Portland Ave. to Port of Tacoma Rd.; and, Port of Tacoma Rd. to King Co Line) and the Supplemental EA addresses only two project segments, it is not possible to confirm that all quantities are consistent with the Opinion (e.g., acres of new impervious surface; acres retrofitted for water quality treatment).

TAKE PRIDE IN AMERICA

Letter from United States Fish and Wildlife Service to Carrie M. Berry on September 2, 2009

Response to LCA 1-1

WSDOT submitted two separate Biological Assessments, one for the two segments covered in the supplemental EA, and one for the Port of Tacoma Road to the King County Line project.

The ESA Services (National Marine Fisheries Service and United States Fish and Wildlife Service) decided to combine the two Biological Assessments into one Biological Opinion. WSDOT will re-initiate ESA consultation with the ESA Services as project changes occur.

Letter 1 (cont'd)

LCA 1-2

- The Supplemental EA states (p. 3-50), "The projects could affect but are not likely to adversely affect three federally threatened fish species ... Chinook ... bull trout ... [and] steelhead". This statement is correct. The Opinion does in fact describe adverse effects to all three listed fish species. Accordingly, we recommend that this content from the Supplemental EA be revised to instead read, "*The project's potential adverse effects to listed fish have been addressed through ESA consultation and the issuance of a Biological Opinion. The Biological Opinion concludes that the proposed project will have temporary and permanent adverse effects to listed fish species, but also finds that the proposed project will not jeopardize the continued existence of these species, and will not destroy or adversely modify their designated critical habitat*".

LCA 1-3

- It is unclear the extent to which the proposed project will fully off-set and mitigate for unavoidable impacts to floodplain functions and hydrology. The Supplemental EA includes a number of confusing and/or seemingly inconsistent statements, including the following:

> "WSDOT is developing mitigation plans to address unavoidable permanent effects to wetlands, [and] loss of floodplain storage volume … from the proposed projects. Two wetland mitigation sites are being considered … but would not fully meet flood storage capacity needs … A third potential site … is being studied for additional floodplain mitigation only" (p. 2-16).
>
> "The projects would result in a net increase in fill placement within the regulated floodplain … of the Puyallup River. The net effects to flood storage capacity … would be up to 30 acre-feet" (p. 3-22).
>
> "The placement of approximately 484,000 cubic yards of fill in the Puyallup River basin …could increase turbidity … during construction" (p. 3-51).
>
> "Reduction of vegetated surfaces, fill and increased surface runoff could … [disrupt] … the hydrologic regime and adversely affect aquatic ecosystems and fish species … by altering the duration and frequency of runoff, groundwater infiltration, and water quality conditions. The extent of hydrologic effects … cannot be quantified with any certainty" (p. 3-51).
>
> "Incorporate incidental infiltration … for as much precipitation and storm water runoff as possible to replicate existing conditions" (p. 5-7).

LCA 1-3

In contrast, the Opinion states, "Fill in the regulated floodplain of the Puyallup River will displace … approximately 16 acre-feet of flood storage volume" (p. 4), and finds that "The proposed action includes sufficient flow control … to offset any adverse effects of the action on hydrology … The effects of the proposed action … from alterations in … hydrology are considered … insignificant" (p. 8).

We recommend the following: 1) Clearly identify and consistently describe the size of unavoidable impacts to the floodplain; 2) Explain what functions (including habitat functions) will be lost or impaired as a result of floodplain fill; 3) Clarify whether and how the proposed stormwater design will "match developed discharge durations to predeveloped durations" (i.e., rather than replicate existing conditions), consistent with the requirements of the *Highway Runoff Manual* and *Stormwater Management Manual for Western Washington*; and, 5) Ensure that the proposed stormwater design, and wetland and floodplain mitigation proposals fully off-set all unavoidable impacts to floodplain functions and hydrology (including habitat functions).

Letter from United States Fish and Wildlife Service to Carrie M. Berry on September 2, 2009 (continued)

Response to LCA 1-2
WSDOT will include this language in the errata.

Response to LCA 1-3
WSDOT re-initiated consultation with the ESA Services to address the changes to the projects so that the language in the supplemental EA and the ESA consultations are consistent.

Letter 1 (cont'd)

LCA 1-4

- Similarly, with regard to indirect effects to the pattern or rate of land use conversion, the Supplemental EA and Fish, Wildlife, and Vegetation Discipline Report include a number of confusing and/or seemingly inconsistent statements:

  > "Effects to land use and land use patterns are expected to be minimal" (p. xxiv).
  >
  > "Indirect effects on land use … are unlikely to occur." (p. 3-4).
  >
  > "The proposed projects would not contribute noticeably to changes in land use patterns and would not contribute to cumulative effects on land use changes in the area." (p. 4-3).
  >
  > "Indirect effects … could include facilitating an increase in growth by improving access to and easing transportation in … Tacoma and surrounding areas. Improved access could potentially increase land development in the vicinity of the interchange, thereby potentially increasing encroachment on sensitive areas including riparian areas and their buffers. However, the proposed projects are expected to facilitate growth in the project vicinity that is mostly already planned and documented" (Fish, Wildlife, and Vegetation Discipline Report, p. 5-34).

  In contrast, the Opinion states, "Given the specific intent of the project to increase HOV lane capacity, existing zoning and land use, and the developed nature of the surrounding environment, [we] have concluded that any effects occurring as the result of induced growth will be too small to adversely affect ESA-listed species" (p. 16).

  Please clarify whether the Supplemental EA has in fact found reasonably foreseeable indirect land use effects which might, in the future, further degrade ecosystem functions or values with significance for listed fish species.

LCA 1-5

- Content included in the Supplemental EA (pp. 3-63, 3-66, 5-8) indicates that demolition of the existing Puyallup River bridges, and other work conducted on and around the bridges, could displace or otherwise disturb nesting birds. This content also indicates that the project will take measures to prevent nesting in order to minimize conflicts during construction. Please be advised that a strategy to avoid and minimize these conflicts during construction will require careful planning and implementation. For additional guidance and assistance on this matter, including the requirements of the Migratory Bird Treaty Act, please feel free to contact our office.

If you or your staff would like to discuss these comments please contact Ryan McReynolds (360-753-6047) or Emily Teachout (360-753-9583) of my staff.

Sincerely,

for

Ken S. Berg, Manager
Washington Fish and Wildlife Office

cc:
FHWA,Olympia, WA (W. McAbee)

Letter from United States Fish and Wildlife Service to Carrie M. Berry on September 2, 2009 (continued)

Response to LCA 1-4

Although growth in the area surrounding the project is projected to occur, WSDOT has concluded that the rate and type of growth will not be affected by the HOV project. The Tacoma-Pierce County HOV program has been proposed and designed to accommodate the traffic needs expected as a result of population and employment growth in the area that is projected to occur with or without the HOV project. The rate and type of growth in the area surrounding the project will be primarily determined by regional and national economic activity and land use policies and regulations of the cities of Tacoma and Fife and other nearby local jurisdictions.

The extent of any ecosystem degradation resulting from future growth will primarily depend on the degree to which local regulations, such as those governing development in critical areas, control impacts from new growth. The local governments have stringent requirements for development in such areas and thus WSDOT does not foresee future degradation of these critical areas.

Response to LCA 1-5

Comment noted.

Letter 2

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

September 18, 2009

Carrie Berry, Environmental Manager
WA St. Department of Transportation
Tacoma/Pierce County HOV Program
PO Box 47376
Olympia, WA 98504-7376

Dear Ms. Berry:

Thank you for the opportunity to comment on the national environmental policy act/environmental assessment for the I-5 M Street to Port of Tacoma Road HOV project located in Tacoma and Fife. Although you are receiving our comments after the review period has ended, please consider them throughout the review process. The Department of Ecology (Ecology) reviewed the information provided and has the following comment(s):

LCA 2-1 **HAZARDOUS WASTE & TOXICS REDUCTION: Samuel Iwenofu (360) 407-6346**

Section 3.5 identified 29 sites determined to contain hazardous material within or immediately adjacent to the project limit. Since the applicant stated that they will clean up contaminants encountered during construction process. The applicant must comply with the Dangerous Waste Regulation, Chapter 173-303-WAC, and request for a Contained-In Determination for soils contaminated with listed dangerous waste constituents in accordance with Ecology's "Contained-In Policy." For assistance and information about the Contained-In Policy contact Samuel Iwenofu at the phone number given above.

LCA 2-2 **TOXICS CLEANUP: Marv Coleman (360) 407-6259**

The proposed action is adjacent to a known contaminated site consisting of hazardous material storage vaults constructed by WSDOT in the mid-1980s. They appear to be within the ¼ mile from I-5 centerline footprint, as discussed in Section 3.5. Section 3.5 discussed the potential for petroleum hydrocarbons and related contaminants to be present. What was conspicuously missing was discussion of Polynuclear Aromatic Hydrocarbons, which are the main concern related to the waste material in the vaults. Contaminants may be present at the site of the proposed action. Design drawings for the portion of the project that is in the vicinity of the vaults (in the I-705 Interchange) should be forwarded to Ecology SWRO Toxics Cleanup Program and Tacoma Pierce County Health Department Solid Waste Division for evaluation regarding potential risk to the vaults or soil/groundwater contamination that may be present in their vicinity, prior to start of construction.

LCA 2-3 If contamination is discovered, it must be reported to Ecology, Southwest Regional Office. Contaminated soils or water may require special handling and/or disposal to protect site workers, visitors, public health, or the environment. If contamination is currently known or observed during construction, sampling of the potentially contaminated media must be conducted. If a Phase II site assessment is required and contamination of soil or groundwater is readily visible, or is revealed by

Letter from Washington State Department of Ecology to Carrie M. Berry on September 18, 2009

Response to LCA 2-1
Comment noted. WSDOT will comply with all applicable Federal, State, tribal or local laws, ordinances, and regulations.

Response to LCA 2-2
Comment noted. WSDOT will comply with all applicable Federal, State, tribal or local laws, ordinances, and regulations.

Response to LCA 2-3
Comment noted. WSDOT will comply with all applicable Federal, State, tribal or local laws, ordinances, and regulations.

Letter 2 (cont'd)

LCA 2-3 sampling, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required contact Marv Coleman at the phone given above.

WATER QUALITY: Roberta Woods (360) 407-6269

LCA 2-4 Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.

LCA 2-5 Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.

LCA 2-6 Proper disposal of construction debris must be on land in such a manner that debris cannot enter the water of the state, stormdrains draining to waters of the state or cause water quality degradation of state waters.

LCA 2-7 During construction, all releases of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills should take precedence over other work on the site.

Ecology's comments are based upon information provided by the lead agency. As such, they may not constitute an exhaustive list of the various authorizations that must be obtained or legal requirements that must be fulfilled in order to carry out the proposed action.

If you have any questions or would like to respond to these comments, please contact the appropriate reviewing staff listed above.

Department of Ecology
Southwest Regional Office

(SM: 09-5214)

cc: Marv Coleman, TCP
Samuel Iwenofu, HAZ
Roberta Woods, WQ

Letter from Washington State Department of Ecology to Carrie M. Berry on September 18, 2009 (continued)

Response to LCA 2-3 (continued)
(see previous page of responses)

Response to LCA 2-4
Comment noted. WSDOT will comply with all applicable Federal, State, tribal or local laws, ordinances, and regulations.

Response to LCA 2-5
Comment noted. WSDOT will comply with all applicable Federal, State, tribal or local laws, ordinances, and regulations.

Response to LCA 2-6
Comment noted. WSDOT will comply with all applicable Federal, State, tribal or local laws, ordinances, and regulations.

Response to LCA 2-7
Comment noted. WSDOT will comply with all applicable Federal, State, tribal or local laws, ordinances, and regulations.

Oral Comments

Oral Comment 1

Transcript of the Testimony of

Date: August 18, 2009
Case: I-5: M Street to Port of Tacoma Road Environmental Hearing

Printed On: August 25, 2009

Dixie Cattell & Associates
Phone: 360-352-2506
Fax: 360-943-5334
Email: dcattell@comcast.net
Internet: www.dca-reporters.com

Testimony from several public open house attendees to Rebecca Lindauer (Court Reporter) on August 18, 2009

Oral Comment 1 (cont'd)

COLLOQUY

BE IT REMEMBERED that on Tuesday, August 18, 2009, at 4:00 p.m., at 701 S. 37th Street, Tacoma, Washington, before REBECCA S. LINDAUER, Notary Public in and for the State of Washington, the following proceedings were had, to wit:

OC 1-1 MR. JOHN PELLISIER: Make a skip lane that comes from southbound I-5's collector distributor to the I-5/ 38th Street East cloverleaf. Comes off the cloverleaf or approximately thereabouts, goes over the 38th Street/I-5 onramp and drops down onto Tacoma Mall Boulevard.

OC 2-1 MS. JORI ADKINS: On the Fife side of the Puyallup River, they're going to sell off some of the land that is on the north side of the realignment of the highway, and I think that they should be holding on to that for open space and for future mitigation for wetlands.

OC 2-2 And, also, I'm concerned about the D Street bridge up to McKinley. The sidewalks at seven feet are not wide enough, and they should be near ten. And we should be working with the McKinley neighborhood and the Dome District neighborhood, who have not been notified about this, and maybe should have through the city. I don't know.

OC 2-3 The wetland areas near the McKinley Park, if there could be way for mitigation for the loss of the No. 4 wetlands. Could be mitigated by helping the McKinley Park

Testimony from several public open house attendees to Rebecca Lindauer (Court Reporter) on August 18, 2009 (continued)

Response to OC 1-1
The purpose of the projects within the supplemental EA is to enhance the mobility of people, goods, and services within the HOV Program corridor. This will be accomplished by constructing HOV lanes, in each direction along I-5, from M Street through the Port of Tacoma interchange. Analysis and design of additional access ramps to specific areas in Tacoma is beyond the scope of this project.

Response to OC 2-1
WSDOT will provide this suggestion to its regional office so other projects needing mitigation can explore this potential option.

Response to OC 2-2
The proposed McKinley Way bridge includes both a paved bike lane and a 7-foot concrete sidewalk, in accordance with current WSDOT and City of Tacoma design criteria.

Response to OC 2-3
When selecting sites for mitigation, WSDOT uses guidelines developed jointly in 2006 by the Washington Department of Ecology, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. The mitigation site needs to be able to meet the guidelines for the type, area, and functions of wetlands being impacted and include a mitigation buffer. When considering mitigation sites, WSDOT looks at the combined project wetland impacts rather than the individual wetland impacts. Consolidating the mitigation at one site usually is a cost-savings to the public, provides greater certainty to the regulatory agencies, and typically results in greater environmental benefits. Mitigation at multiple smaller sites increases costs and permitting time because each site would need separate property acquisition, design, permitting, construction, and monitoring.

COLLOQUY

Oral Comment 1 (cont'd)

OC 2-3 with their wetland areas, that would be good.

OC 3-1 MS. CAROLE BRAATEN: First of all, I'm concerned with the HOV project. I want to know what the statistics are of how many people are actually traveling with two or more people going north or going south currently, not from last year or three years ago, because it's -- I travel in that northerly direction and it's changed dramatically in the last three years. As to the individuals who I see now going north, the traffic has gone down quite a bit, so I need to know actually, is it beneficial to the public to have HOV lanes at all? Because if it isn't beneficial, if we don't have enough people traveling two to three people a car and that means at least every third car has to have two people to five people or however many, doesn't just mean the Sound Transit -- I mean, the Pierce Transit, which is a private business, going north and south, bus system. That's one concern.

OC 3-2 My other concern is where the project for M Street starts going towards the Tacoma Dome, Puyallup River. The bridge -- the new work they just did south of M Street is already starting to show fractures and they're having degrading of the roadway already. I have heard now it is not a permanent road. It is only a temporary. And even though it's a temporary, due to the -- we had 6 million containers come out of Port of Tacoma Road, probably at

Testimony from several public open house attendees to Rebecca Lindauer (Court Reporter) on August 18, 2009 (continued)

Response to OC 2-3 (continued)
(see previous page of responses)

Response to OC 3-1
In 2006, between 15 percent and 19 percent of the vehicles on both directions of I-5 in the study area during the morning and afternoon peak hours had two or more persons, with the percentage projected to increase to between 15 percent and 24 percent by the year 2030. WSDOT permanent traffic recorder data on I-5 in the vicinity of the project shows that the 2008 average daily traffic volume in the study area is down approximately 1 percent compared to 2006 volumes. More recent HOV traffic volumes are not available; however, it is likely that HOV use has increased since 2006 due to all-time record high gas prices in the summer of 2008 in the Puget Sound region (per the U.S. Department of Energy). According to Sound Transit quarterly performance reports, daily ridership on ST Express routes from Seattle-to-Pierce County increased 17 percent from 2006 to 2009. Therefore, the existing year transportation documentation provided in the Supplemental Environmental Assessment is consistent with current conditions. The projects would still benefit the public by accommodating existing and predicted traffic volumes, increasing vehicle throughput, accommodating future projected population growth, and improving safety.

Response to OC 3-2
Future Tacoma/Pierce County HOV projects include pavement reconstruction on I-5 within the area of concern, north and south of the M Street bridge. As future projects await construction, WSDOT maintenance crews continue regular inspections and repairs of I-5.

Oral Comment 1 (cont'd)

COLLOQUY

OC 3-2 least half of them went south, plus the other truck traffic that goes by, I'm concerned for the safety of the citizens traveling that part of the road.

OC 3-3 The road that's coming through Tacoma, I'm concerned about they're taking it into the south side of the road, what type of vegetation and plantings they're going to have that are going along the road in order to buffer the sounds and the noise. I would like to see some native plants, some other plants along there, smaller vine maples, dogwood trees, but something to buffer the noise that is coming off the freeway. If you're going to add extra freeway, you need to add extra buffer zones, and that is in vegetation like kinnikinnick, salal, Oregon grape, vine maple, and some of our smaller vegetation. Some of it you can't add native because the soil types don't allow it, but no noxious weeds such as ivy and Scotch broom.

OC 3-4 Also, over the Puyallup River Bridge, I'm concerned with the fact that everything be retrofitted for an earthquake and that goes with all of the construction along this road, that there is retrofitting, considering that we could have major quakes and the roads will sustain a major quake. And I'm also concerned about the water runoff and

OC 3-5 where the water from these roads is going to be traveling.

OC 3-6 And they're closing down part of the freeway from the project where it is from the Puyallup River to just past the

Dixie Cattell & Associates (360) 352-2506

Testimony from several public open house attendees to Rebecca Lindauer (Court Reporter) on August 18, 2009 (continued)

Response to OC 3-2 (continued)
(see previous page of responses)

Response to OC 3-3
WSDOT will replant areas that are temporarily disturbed with native vegetation. Roadside revegetation is not considered as noise abatement; however, any future reduction of noise levels resulting from roadside vegetation would be a benefit.

Response to OC 3-4
Tacoma/Pierce County HOV Program design and construction procedures are consistent with current WSDOT policy for seismic design practices and criteria.

Response to OC 3-5
WSDOT will provide water quality treatment for stormwater runoff from a large amount of existing pavement in addition to added pavement. This treated water will be conveyed from the I-5 corridor in storm drainage systems that lead to the Thea Foss Waterway and the Puyallup River, as occurs in the existing condition.

Response to OC 3-6
I-5 will remain open for traffic flow in both northbound and southbound directions during construction of all of the proposed projects. WSDOT will communicate and work with local agencies, state emergency services, and Washington State Patrol on detours should an extreme flooding event occur that shuts down I-5 and/or interchanges. The extent of a flood and how much of I-5 that may be underwater in an extreme water event cannot be predetermined so signage will be put in place for detours in the event that flood waters cover I-5. The proposed projects will not make the potential for flooding on I-5 or adjacent roadways any greater than at present, but cannot eliminate that threat.

COLLOQUY

Oral Comment 1 (cont'd)

OC 3-6 Port of Tacoma towards Wapato Creek. We're looking at the substantial possibility of having floods. We need to make sure that we do have that area addressed as far as an evacuation route out for the people of Fife. Many of our roads were cut off that night and it was very difficult to get out. I know because I came from -- actually went up to the shelter in Milton and came back down, and I ended up on Pacific Highway and a number of it was -- the situation was the water was already flooding on Pacific Highway on the road itself, on the hill, and other situations.

OC 3-7 And, also, I'm looking at -- they're talking about on the one part that goes from M Street to Tacoma Dome, you're looking at McKinley Avenue and also Pacific Avenue. Pacific Avenue is in and out of Tacoma, but again, coming up either Pacific Avenue or McKinley Avenue, if it's an evacuation route from flood issues, I have my concerns that these should only be one at a time taken out and the consideration needs to be of evacuating for flood issues, especially down towards the river area.

OC 3-8 And coming in to the Port of Tacoma area and that road, again, I would like to see actually how many people we are talking about statistically needing HOV lanes. Is it really justified, not warranted, but a justified project to call them HOV? They may need to be named others, but we're also looking at the trucks coming on in that area.

Testimony from several public open house attendees to Rebecca Lindauer (Court Reporter) on August 18, 2009 (continued)

Response to OC 3-6 (continued)
(see previous page of responses)

Response to OC 3-7
WSDOT will communicate and work with local agencies, state emergency services, and the Washington State Patrol on any detour routes from flooding issues on I-5.

Response to OC 3-8
Between 15 percent and 19 percent of the vehicles on I-5 northbound and southbound at Port of Tacoma Road during the morning and afternoon peak hours had two or more persons (approximately 1,200 vehicles northbound and 1,050 vehicles southbound with 2 or more persons during the peak hours). This data includes freight traffic. These vehicles are called HOV because they have two or more persons, which is the definition for a HOV vehicle in this area of I-5. In addition to HOV lanes, the project will also construct auxiliary lanes in both directions of I-5 between the Port of Tacoma Road and SR 167/Portland Avenue interchanges to help trucks merge safely onto I-5.

Oral Comment 1 (cont'd)

COLLOQUY

OC 3-9 Are they considering how they are actually being able to enter and to exit? We've had a number of trucks that have flipped through that area. They come in the road and they have blocked the road. It makes a hardship on the Washington State Patrol. It blocks areas. So I would like to see an entrance and exit, since we do have the port there that considers that particular truck traffic and meets the need so that the trucks aren't running the cars off the road either, but don't jeopardize the cars, and I would like consideration with that.

OC 3-10 And they also addressed from -- it would be by Wapato Creek, Port of Tacoma, slash, to the Fife curves and up north. I am exceedingly concerned because of Fife's high water table and our flooding that they consider the curve at Fife and raise that -- raise the whole road because of what I saw. There was a substantial amount of flooding that night, that day that we just had back in January 2009, and that all needs to be addressed.

OC 3-11 Also a number of warehouses and other types of -- any type of -- what we're looking at is any type of development or anything that puts rocks into the soil that displaces the water, that causes flooding towards the freeway, which the freeway did flood out, part of it, and that freeway needs to be able to be used for traffic and for an escape route out, so that's what I'm interested in right now.

Dixie Cattell & Associates (360) 352-2506

Testimony from several public open house attendees to Rebecca Lindauer (Court Reporter) on August 18, 2009 (continued)

Response to OC 3-9
Changes to the Port of Tacoma Road would be separate projects and not within the scope of this document.

Response to OC 3-10
The I-5 HOV improvement project extending from near the Wapato Creek crossing to the King County Line is not included in this supplemental EA.

Response to OC 3-11
The proposed projects will require placement of fill in existing floodplain areas for widened and realigned road bed material, thus displacing existing flood storage capacity in those areas. WSDOT will create compensatory flood storage volume at nearby mitigation sites to offset those impacts.

ATTACHMENT F

Agency Concurrence Letters

Agency Concurrence Letters

This attachment includes the following agency concurrence letters and correspondence for the FONSI for the Tacoma/Pierce County HOV Program: I-5: M Street to Portland Avenue – HOV; I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV; and I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV.

- Section 4(f) concurrence letters
- Endangered Species Act concurrence letters
- Section 106 concurrence letters

Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

Olympic Region
Tacoma/Pierce County HOV Office
724 Quince St. SE, Suite 206
P.O. Box 47376
Olympia, WA 98504-7376
360-709-8130
360-709-8131 Fax
TTY: 1-800-833-6388
www.wsdot.wa.gov

October 9, 2008

Douglas Fraser
Planning, Design & Development Design &
Construction Manager
Metro Parks Tacoma
4702 S 19th Street
Tacoma, WA 98405

Subject: Concurrence with Section 4(f) of the Transportation Act of 1966
WSDOT – I-5 M Street to Portland Avenue HOV Lanes

Dear Mr. Fraser:

As part of the environmental review process for the Interstate 5 (I-5) M Street to Portland Avenue HOV project in Tacoma, the Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA) is conducting a Section 4(f) evaluation in accordance with the Department of Transportation Act of 1966 (49 USC 303). The initial evaluation has concluded that the M Street to Portland Avenue project will result in a use, as defined under Section 4(f), of McKinley Park. The property on which this recreational facility is located is owned in part by the City of Tacoma.

McKinley Park sits on a slope above the I-5 right-of-way between East McKinley Way and East K Street in the McKinley Hill District of Tacoma. The north boundary of the park adjoins the I-5 right-of-way. As part of the M Street to Portland Avenue project, WSDOT will be adding high occupancy vehicle (HOV) lanes in each direction on I-5. The addition of the HOV lanes will require the construction of a retaining wall on the south side of I-5 along the McKinley Park frontage. The additional lanes and retaining wall will be located within existing WSDOT right-of-way. However, anchors for the retaining wall will extend southward below the ground surface into McKinley Park property, and will require acquisition of a subterranean easement from the City of Tacoma. Construction of the retaining wall and installation of the underground anchors will not require any permanent surface modifications within the boundaries of McKinley Park.

The subterranean easement will include limited restrictions on subsurface and surface activities in the vicinity of the anchors. The wall and anchors will be designed to

accommodate highway legal truck loading, or a uniform surcharge of 250 pounds per square foot (psf) above the anchors. Other limitations on activities above the anchors include the following:

- No water-bearing pipes greater than 1-inch diameter unless the pipe is cased.
- No temporary or permanent excavation more than 3 feet below the top of the wall elevation without Washington Professional Engineer review.
- No ponds, swimming pools, or underground storage tanks within 150 feet of the retaining wall.

None of these restrictions are in conflict with the master plan for McKinley Park.

In addition, reconstruction of the McKinley Way Bridge over I-5 will require temporary relocation of the eight-foot-deep utility pole located at the far western corner of the park property. The pole is located approximately 15 feet from the edge of the McKinley Way right-of-way boundary. Following reconstruction of the bridge, the pole will be reinstalled and the area surrounding the pole in the western corner of the park will be restored to its original condition. During construction of the bridge, water and sewer utilities located in the McKinley Way right-of-way will be relocated, and service to the park may be temporarily interrupted. Effects on utilities are described in more detail in the attached Utilities Technical Memorandum.

As defined under Section 4(f), acquisition of the subsurface easement constitutes a use, and the construction disturbance at the western corner of the park and the potential temporary utility service disruption constitute temporary uses. WSDOT, on behalf of FHWA, is required to evaluate the proposed uses to determine the impact on McKinley Park, determine whether measures to avoid the uses are reasonable and prudent, and to identify measures to minimize the impact if the uses cannot be avoided.

Under Section 4(f), an impact to a recreational facility may be determined to be *de minimis* if the use of the facility, including consideration of measures to avoid, minimize, mitigate, or enhance, "does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f)." (FHWA guidance on *de minimis* impact criteria is located at http://www.fhwa.dot.gov/HEP/qasdeminimus.htm). Based on its evaluation and consultation with City of Tacoma and Metro Parks Tacoma staff, WSDOT has concluded that the acquisition of a subterranean easement, the installation of the retaining wall subsurface anchors, the temporary relocation of the utility pole in the western corner of the park, and temporary utility service disruptions would not adversely affect activities, features, and attributes of the park. Therefore, the proposed uses of McKinley Park property would be *de minimis* under Section 4(f).

To secure approval of the Section 4(f) evaluation from the FHWA, documented concurrence is required from the agency having jurisdiction over the affected resources. By your signature below, please confirm that Metro Parks Tacoma has reviewed this letter, agrees with the conclusions regarding the nature of the Section 4(f) use of McKinley Park, and agrees that the use is *de minimis*.

Sincerely,

Washington State Department of Transportation

for John Ho, P.E.
Project Engineer

Metro Parks Tacoma Concurrence:

Signature: _____ Date: 10/20/08

Douglas Fraser
Planning, Design & Development
Design & Construction Manager

List of Attachments

- Map showing Location of Subsurface Easement
- Cross-section showing Easement Zone for Anchored Walls
- Utilities Technical Memorandum

Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

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TTY: 1-800-833-6388
www.wsdot.wa.gov

October 9, 2008

Connie Corpuz
Real Estate Manager
City of Tacoma
747 Market Street
Tacoma, WA 98402

Subject: Concurrence with Section 4(f) of the Transportation Act of 1966
WSDOT – I-5 M Street to Portland Avenue HOV Lanes

Dear Ms. Corpuz:

As part of the environmental review process for the Interstate 5 (I-5) M Street to Portland Avenue HOV project in Tacoma, the Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA) is conducting a Section 4(f) evaluation in accordance with the Department of Transportation Act of 1966 (49 USC 303). The initial evaluation has concluded that the M Street to Portland Avenue project will result in a use, as defined under Section 4(f), of McKinley Park. The property on which this recreational facility is located is owned in part by the City of Tacoma.

McKinley Park sits on a slope above the I-5 right-of-way between East McKinley Way and East K Street in the McKinley Hill District of Tacoma. The north boundary of the park adjoins the I-5 right-of-way. As part of the M Street to Portland Avenue project, WSDOT will be adding high occupancy vehicle (HOV) lanes in each direction on I-5. The addition of the HOV lanes will require the construction of a retaining wall on the south side of I-5 along the McKinley Park frontage. The additional lanes and retaining wall will be located within existing WSDOT right-of-way. However, anchors for the retaining wall will extend southward below the ground surface into McKinley Park property, and will require acquisition of a subterranean easement from the City of Tacoma. Construction of the retaining wall and installation of the underground anchors will not require any permanent surface modifications within the boundaries of McKinley Park.

The subterranean easement will include limited restrictions on subsurface and surface activities in the vicinity of the anchors. The wall and anchors will be designed to accommodate highway legal truck loading, or a uniform surcharge of 250 pounds per

square foot (psf) above the anchors. Other limitations on activities above the anchors include the following:

- No water-bearing pipes greater than 1-inch diameter unless the pipe is cased.
- No temporary or permanent excavation more than 3 feet below the top of the wall elevation without Washington Professional Engineer review.
- No ponds, swimming pools, or underground storage tanks within 150 feet of the retaining wall.

None of these restrictions are in conflict with the master plan for McKinley Park.

In addition, reconstruction of the McKinley Way Bridge over I-5 will require temporary relocation of the eight-foot-deep utility pole located at the far western corner of the park property. The pole is located approximately 15 feet from the edge of the McKinley Way right-of-way boundary. Following reconstruction of the bridge, the pole will be reinstalled and the area surrounding the pole in the western corner of the park will be restored to its original condition. During construction of the bridge, water and sewer utilities located in the McKinley Way right-of-way will be relocated, and service to the park may be temporarily interrupted. Effects on utilities are described in more detail in the attached Utilities Technical Memorandum.

As defined under Section 4(f), acquisition of the subsurface easement constitutes a use, and the construction disturbance at the western corner of the park and the potential temporary utility service disruption constitute temporary uses. WSDOT, on behalf of FHWA, is required to evaluate the proposed uses to determine the impact on McKinley Park, determine whether measures to avoid the uses are reasonable and prudent, and to identify measures to minimize the impact if the uses cannot be avoided.

Under Section 4(f), an impact to a recreational facility may be determined to be *de minimis* if the use of the facility, including consideration of measures to avoid, minimize, mitigate, or enhance, "does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f)." (FHWA guidance on *de minimis* impact criteria is located at http://www.fhwa.dot.gov/HEP/qasdeminimus.htm). Based on its evaluation and consultation with City of Tacoma and Metro Parks Tacoma staff, WSDOT has concluded that the acquisition of a subterranean easement, the installation of the retaining wall subsurface anchors, the temporary relocation of the utility pole in the western corner of the park, and temporary utility service disruptions would not adversely affect activities, features, and attributes of the park. Therefore, the proposed uses of McKinley Park property would be *de minimis* under Section 4(f).

To secure approval of the Section 4(f) evaluation from the FHWA, documented concurrence is required from the agency having jurisdiction over the affected resources. By your signature below, please confirm that the City of Tacoma has reviewed this letter, agrees with the conclusions regarding the nature of the Section 4(f) use of McKinley Park, and agrees that the use is *de minimis*.

Sincerely,

Washington State Department of Transportation

John Ho, P.E.
Project Engineer

City of Tacoma Concurrence:

Signature: _____ Date: 10/17/08
Connie Corpuz
Real Estate Manager

List of Attachments

- Map showing Location of Subsurface Easement
- Cross-section showing Easement Zone for Anchored Walls
- Utilities Technical Memorandum

United States Department of Commerce
National Oceanic and Atmospheric Administration
United States Department of the Interior
Fish and Wildlife Service

National Marine Fisheries Service
7600 Sand Point Way N.E.
Seattle, Washington 98115

U.S. Fish and Wildlife Service
510 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

Reply To:
NMFS Tracking No.: March 16, 2009
2008/05448
2008/05581

USFWS Log No.:
13410-2008-F-0582

Daniel M. Mathis
Division Administrator
Federal Highway Administration
Evergreen Plaza Building
711 S. Capitol Way, Suite 501
Olympia, Washington 98501

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Tacoma HOV Project, Pierce County, Washington. (Sixth Field HUC, 171100140599, Lower Puyallup River)

Dear Mr. Mathis:

The enclosed document contains a biological opinion prepared by the National Marine Fisheries Service and United States Fish and Wildlife Service (thereafter referred to as the Services) pursuant to Section 7(a)(2) of the Endangered Species Act on the effects of the Federal Highways Administration's funding of the Tacoma HOV Project, in Pierce County. In this biological opinion, the Services conclude that the action, as proposed, is not likely to jeopardize the continued existence of Puget Sound Chinook salmon, Puget Sound steelhead, or Coastal-Puget Sound Bull Trout or result in the destruction or adverse modification of designated critical habitat for Puget Sound Chinook salmon and Coastal-Puget Sound Bull Trout.

As required by section 7 of the Endangered Species Act, the Services provided an incidental take statement with the biological opinion. The incidental take statement describes reasonable and prudent measures National Marine Fisheries Service considers necessary or appropriate to minimize incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the Federal agency and any person who performs the action must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the Endangered Species Act take prohibition.

This document also includes the results of our analysis of the action's likely effects on essential fish habitat pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes four conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on essential fish habitat. These Conservation Recommendations are a non-identical set of the Endangered Species Act Terms and Conditions. Section 305(b) (4) (B) of the MSA requires Federal agencies to provide a detailed written response to National Marine Fisheries Service within 30 days after receiving these recommendations.

If the response is inconsistent with the essential fish habitat conservation recommendations, the Federal Highways Administration must explain why the recommendations will not be followed, including the justification for any disagreements over the effects of the action and the recommendations. In response to increased oversight of overall essential fish habitat program effectiveness by the Office of Management and Budget, National Marine Fisheries Service established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each essential fish habitat consultation and how many are adopted by the action agency. Therefore, in your statutory reply to the essential fish habitat portion of this consultation, we ask that you clearly identify the number of conservation recommendations accepted.

If you have any questions, please contact Mike Grady of my staff at the Washington State Habitat Office at (206) 526-4645, by e-mail at Michael.Grady@noaa.gov, or by mail at the letterhead address; and/or Emily Teachout with USFWS at (360) 753-9583, by email at Emily_Teachout@fws.gov, or by mail at the letterhead address.

Sincerely,

Barry A. Thom
Acting Regional Administrator
National Marine Fisheries Service

Ken S. Berg, Manager
Washington Fish and Wildlife Office
U.S. Fish and Wildlife Service

Enclosure

cc: Wendy McAbee, FHWA
Sharon Love, FHWA
John Grettenberger, USFWS
Carrie Berry, HOV Program Environmental Manager, WSDOT
Paul Wagner, HQ, WSDOT

U.S. Department
of Transportation

**Federal Highway
Administration**

Washington Division

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April 13, 2009

HFO-WA.5/WA 911

Steve Landino
NOAA National Marine Fisheries Service
Habitat program/Olympia Field Office
510 Desmond Drive SE, Suite 103
Lacey, WA 98503-1273

EFH

Response to Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Conservation Recommendations for the Tacoma HOV Project, Pierce County, Washington. (Sixth Field HUC, 171100140599, Lower Puyallup River) (NMFS Tracking No.: 2008/05448, 2008/05581)

Dear Mr. Landino:

On March 18, 2009, the Federal Highway Administration (FHWA) received the biological opinion for the Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Tacoma HOV Project, Pierce County, Washington. (Sixth Field HUC, 171100140599, Lower Puyallup River) (**NMFS Tracking No.: 2008/05448, 2008/05581.**)

Federal agencies are required to provide a detailed written response to National Marine Fisheries Service (NMFS) essential fish habitat (EFH) conservation recommendations within 30 days of receipt of these recommendations [50 CFR 600.920(j) (1)]. The response must include a description of measures proposed to avoid, mitigate, or offset the adverse affects of the activity on EFH. If the response is inconsistent with the EFH conservation recommendations, the response must explain the reasons for not following the recommendations. The reasons must include the scientific justification for any disagreements over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how

many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. The summary below supports this reporting requirement.

Total conservation recommendations included in the Tacoma HOV EFH consultation: **28**
Number of conservation recommendations adopted in their entirety by WSDOT/FHWA: **11**
Number of conservation recommendations partially adopted or adopted but requiring clarification: **6**
Number of conservation recommendations not adopted: **11**

Below, each of the conservation recommendations included in the Tacoma HOV Project EFH consultation are provided, along with a response explaining whether or not the conservation recommendations provided by NMFS will be implemented by FHWA. For those conservation recommendations that will not be followed, supporting rationale is also provided. In addition, where applicable, comments have been provided to point out inconsistencies between the ESA Terms and Conditions and the EFH Conservation Recommendations, as well as editorial errors.

1. ***The FHWA should minimize adverse effects from riparian and in-water work by ensuring that WSDOT will:***
   a. ***Ensure that staging and stockpile areas should be a minimum of 300 feet from any sensitive area (e.g. streambanks, riparian areas, wetlands) unless site-specific review completed by the project biologist, indicates that no impacts to the sensitive resource areas will occur due to topography or other factors.***

WSDOT/FHWA cannot comply with this conservation recommendation due to the proximity of the project corridor to wetlands, in particular from Port of Tacoma Road to the King County Line, where wetlands on both sides of the road are adjacent to the road.

The following language was provided in both biological assessments for the projects, as well as on page 14 of the Tacoma HOV biological opinion, to ensure sensitive areas would be protected adequately: "Staging areas will be located on disturbed ground within the project footprint, or other previously disturbed areas away from environmentally sensitive areas. Expected primary sites include the median and outside shoulders of the highway corridor within the cut and fill footprint. It is expected that the contractor will use these primary sites, moving equipment and materials staging ahead of construction as it progresses along the work corridor. Generally, work areas between temporary concrete traffic barriers along the main line I-5 median will be used as staging areas first, followed by work areas behind temporary concrete traffic barriers along the project limits within the right of way (along the roadway shoulders)." Implementation of the TESC measures and the SPCC plan will minimize potential impacts to sensitive areas. Additionally, environmental approvals from other agencies disallow staging in sensitive areas.

   b. ***Use all manual methods in the control of invasive plant species prior to the use of Glyphosate to the maximum extent practicable.***

WSDOT/FHWA will comply with this conservation recommendation for sensitive areas mitigation-related vegetation management. This is consistent with the minimization measures for mitigation-related vegetation management documented in the biological assessments for the projects and on page 19 of the Tacoma HOV biological opinion. For operational and maintenance-related vegetation management, as documented on page 19 of the Tacoma HOV

biological opinion, WSDOT/FHWA will ensure that: "All operational and maintenance related vegetation management will be conducted in accordance with the 4(d) rule issued for these activities on state owned roadways in Washington."

c. ***Ensure that surfactants proven detrimental to aquatic life, specifically LI 700® and WR-11®, will not be used in any herbicide formulations within 15 feet of OHWM of any waterbody (Agri Dex is a preferred substitute).***

WSDOT/FHWA will comply with this conservation recommendation for sensitive areas mitigation-related vegetation management. See response to comment 1b above for clarification on operational and maintenance-related vegetation management.

d. ***Ensure that the six expanded bridges on Hylebos Creek, West Hylebos Creek, and Wapato Creek maintain or improve existing channel forming processes, floodplain functions, and habitat connectivity. The expanded bridges should be designed according to an accepted stream channel design methodology. To determine stable dimension, pattern, and profile, the design process should take the following parameters and considerations into account:***

WSDOT/FHWA cannot comply with most of the terms of this conservation recommendation; additional clarification is requested for each portion of the recommendation below. The bridge expansions at Hylebos, West Hylebos and Wapato Creeks are expansions of existing bridge structures. In order to ensure the structural integrity of these bridges, designs for the expanded portions of the bridges must match the design characteristics and alignments of the existing structures.

i. ***Dimension, pattern, and profile of a western Washington reference stream should be used in the design.***

WSDOT/FHWA cannot comply with this conservation recommendation. It is unclear whether the recommendation is referring to bridge design (see response to comment 1d above) or channel design (see response to comment 1.d.ii below).

ii. ***The new channel should accommodate the current flow regime and consider bankfull flows in design.***

WSDOT/FHWA cannot comply with this conservation recommendation. The project does not propose to construct a new channel. This appears to be language derived from page 101 of the Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the SR 167 Extension, Puyallup to SR 509, Puyallup River and Hylebos Creek (HUC, 171100140599) Lower Puyallup River, Pierce County, Washington (NMFS Tracking No. 2005/05617) biological opinion, in reference to the stream relocations and Riparian Restoration Plan associated with that project. This recommendation is not applicable to the Tacoma HOV project.

iii. ***The new channel should be competent in transporting predicted sediment loads.***

WSDOT/FHWA cannot comply with this conservation recommendation. The project does not propose to construct a new channel. This appears to be language derived from page 101 of the SR 167 biological opinion referenced above and is not applicable to the Tacoma HOV project.

iv. The profile of the river should be proportionate to the pattern and dimensions. That means the placement and spacing of pools and riffles should be a function of stream width and gradient.

WSDOT/FHWA cannot comply with this conservation recommendation. The project does not propose to construct a new channel. This appears to be language derived from page 101 of the SR 167 biological opinion referenced above and is not applicable to the Tacoma HOV project.

v. The new stream channel should be constructed with native material including LWD. Large woody debris should be stabilized by burying. Large woody debris should not be cabled to artificial weights. The stream should not be built or stabilized with large rock, because the native geology does not provide this material.

WSDOT/FHWA cannot comply with this conservation recommendation. The project does not propose to construct a new channel. This appears to be language derived from page 101 of the SR 167 biological opinion referenced above and is not applicable to the Tacoma HOV project.

vi. Floodplain storage and side channels should be constructed to minimize stranding of fish during receding waters. Do not construct isolated depressions; connect depressions to the main channel.

WSDOT/FHWA will comply with this conservation recommendation. This measure does not relate to the six expanded bridges, but is consistent with the description for the floodplain mitigation elements of the project as documented in 1) the biological assessments for the projects, 2) the Description of the Proposed Action section on page 9 of the Tacoma HOV biological opinion, and 3) the minimization measures described for floodplain mitigation on page 21 of the Tacoma HOV biological opinion.

vii. To allow the new stream channel to laterally migrate the banks of the new stream channel should not be hardened with rock. Soft bank armoring as outlined in the WDFW ISPG (WDFW 2002a) may be used to stabilize banks until vegetation is mature enough to provide needed stability.

WSDOT/FHWA cannot comply with this conservation recommendation. The project does not propose to construct a new channel. This appears to be language derived from page 101 of the SR 167 biological opinion referenced above and is not applicable to the Tacoma HOV project.

e. Maintain all restoration and mitigation sites such that they evolve over time with minimal intervention by WSDOT except that which is necessary to ensure that the habitat forming processes, floodplain functions, and habitat connectivity functions are met. Protection of highway infrastructure should only be contemplated when the infrastructure is at risk. The selection of appropriate protection measures, as outlined in the ISPG, will be used on a case-by-case basis, only using riprap as a last resort.

WSDOT/FHWA will comply with this conservation recommendation.

*f. **Minimize the project's effects on in-water and riparian habitat in the lower Puyallup River subbasin by improving riparian habitat at a site within the lower Puyallup River subbasin.***

WSDOT/FHWA will provisionally comply with this portion of the conservation recommendation for impacts to the in-water and riparian habitat of the Puyallup River and is currently in the process of identifying such a site. After the site is identified, EFH consultation will be reinitiated. WSDOT/FHWA will comply with the recommendation if possible; more information and analysis will be needed.

Of the ten proposed wetland mitigation sites, utilize one of the three that are in the Puyallup subbasin when finalizing the wetland mitigation plan. Incorporate fish habitat features to benefit listed fish species in the Puyallup River.

WSDOT/FHWA cannot comply with this portion of the conservation recommendation. This appears to be language derived from page 101 of the SR 167 biological opinion referenced above and is not applicable to the Tacoma HOV project. In particular, the Tacoma HOV program is not considering 10 wetland mitigation sites. The Spring Valley Ranch site provides advance mitigation for a portion of the wetland impacts associated with the Tacoma HOV project, and the Stillwater Site provides mitigation for the remaining wetland impacts.

*g. **Install work area isolation cofferdams extending from the substrate to an elevation such that they will not be inundated at the maximum water level expected during in-water work.***

WSDOT/FHWA will comply with this conservation recommendation for the coffer-dam installed in the vicinity of the new outfall during construction within the Puyallup River. WSDOT/FHWA would like to clarify that in addition to this cofferdam, steel shaft casings will be placed in the Puyallup River to create exclusion areas around drilled shafts.

WSDOT/FHWA would also like to clarify that for work within West Hylebos Creek, coffer dams will not be installed. Instead, perimeter silt fencing will be installed in addition to two filter fabric wrapped sandbag barriers (not coffer dams) to confine the channel between two runs or rows of piles so that all the piles can be driven outside of the wetted channel (see page 12 of the Tacoma HOV biological opinion). For work at Hylebos Creek, no coffer dams will be installed. Instead, perimeter silt fencing and potentially filter fabric-wrapped sandbag barriers will be installed, as described above for West Hylebos Creek. These measures will cause flows to be deflected away from the areas where new piles will be installed along the margins of the ordinary high watermark.

There is no work within the ordinary high water mark at Wapato Creek, so at this crossing, only perimeter silt fencing will be installed.

*h. **Install individual pieces of multi-piece cofferdams in sequence to discourage fish from entering the project area and to allow fish that may become trapped to escape through***

the downstream opening.

WSDOT/FHWA will comply with this conservation recommendation for the coffer dam installed within the Puyallup River (see response to comment 1g above).

i. Conduct cofferdam dewatering in two to three stages, pausing between stages to accommodate fish removal.

WSDOT/FHWA will comply with this conservation recommendation for the coffer dam installed within the Puyallup River (see response to comment 1g above).

j. Remove cofferdam materials only when turbidity levels within the work area are at or below background levels in the affected waterbody.

WSDOT/FHWA cannot comply with this conservation recommendation. The term "work area" is too broad. WSDOT could comply with this recommendation if it stated the following: Remove cofferdam materials only when turbidity levels within the coffer dam are at or below background levels in the affected waterbody.

k. Conduct any pile driving in Hylebos and Wapato Creek below OHWM within dewatered exclusion areas.

WSDOT/FHWA will partially comply with this conservation recommendation.

WSDOT/FHWA will comply with this conservation recommendation for Hylebos and West Hylebos Creeks as described in response to comment 1g above.

WSDOT/FHWA cannot comply with this conservation recommendation for Wapato Creek as there is no pile driving activity below the OHWM proposed at this location.

l. Completely remove all temporary pilings by either pulling or vibrating them out. If they cannot be removed in their entirety, pilings may be cut off two feet below existing streambed level with verbal approval from NMFS.

WSDOT/FHWA will comply with this conservation recommendation for pile-removal within the Puyallup River. No piles will be removed at West Hylebos, Hylebos, or Wapato Creeks.

2. To minimize adverse effects on EFH species and their forage base, the FHWA shall ensure that WSDOT will:

a. Conduct all pile driving activities only during the period from July 15 to August 31.

WSDOT/FHWA cannot comply with this conservation recommendation. The project is not constructible if all pile driving is confined to this period. WSDOT could comply with this recommendation if it stated the following: Conduct all in-water pile driving activities only during the period from July 15 to August 31.

b. Conduct pile driving activities only during the period between one hour before sunrise and one hour after sunset.

WSDOT/FHWA will partially comply with this conservation recommendation.

The in-water pile driving work in the Puyallup River will comply with this conservation recommendation. For pile driving activities in the Puyallup River, the Description of the Proposed Action section of the Tacoma HOV biological opinion (page 11) states that: "Pile driving work will occur during hours of daylight, leaving an eight- to ten-hour period each night when no pile driving will occur."

WSDOT/FHWA cannot comply with this conservation recommendation for Wapato Creek as there is no pile driving activity below the OHWM proposed at this location. The pile driving below the OHWM but outside of the wetted widths at West Hylebos and Hylebos Creeks cannot comply with this conservation recommendation. For in-water pile driving activities at these small creeks, the Description of the Proposed Action section of the Tacoma HOV biological opinion (page 12) states: "The bridge work, including pile driving, will occur during the daytime and nighttime throughout the work window between July 15 to August 31." The limited construction season and short in water work window require that the pile driving work occur during the day and night in order to finish within that period.

c. Specific performance standards for impact pile driving/proofing activities in the Puyallup River include:

i. (iv. Incorrectly numbered in EFH consultation) Conduct impact pile driving operations without the use of a noise attenuation system only as necessary to determine baseline SPLs, and only as specified in the hydroacoustic monitoring plan.

WSDOT/FHWA will comply with this conservation recommendation for pile-installation within the Puyallup River. WSDOT/FHWA provided the Underwater Noise Monitoring Plan for its work in the Puyallup River to NMFS as Appendix L in the biological assessment prepared for Tacoma/Pierce County HOV Program: I-5 Portland Avenue to Port of Tacoma Road – Southbound HOV, I-5 Portland Avenue to Port of Tacoma Road –Northbound HOV. As is specified in that monitoring plan (pages L-2 and L-3), and also as described on page 85 of the Tacoma HOV biological opinion: "Unattenuated pile driving will occur for approximately two minutes on each of the five piles being monitored for a total of approximately 10 minutes."

ii. (v. Incorrectly numbered in EFH consultation) Employ an approved noise attenuation system consisting of a confined bubble curtain or any functionally equivalent or superior system. (See Appendix VII for NMFS approved confined bubble curtain specifications.)

WSDOT/FHWA will comply with this conservation recommendation for a noise attenuation system for pile driving activities within the Puyallup River. Appendix V of the biological opinion, not Appendix VII as stated above, contains the confined bubble curtain specifications.

iii. (vi. Incorrectly numbered in EFH consultation) Monitor attenuation system performance to ensure that pile driving SPLs do not exceed an average of 197

dBpeak (equivalent to a SELs of 168 dB), measured at mid-depth 10 meters from the piling.

WSDOT/FHWA will comply with this conservation recommendation for monitoring within the Puyallup River. The Underwater Noise Monitoring Plan previously provided to NMFS (see response to 2.c.i. above) can be amended to also report on this specific SPL threshold, in addition to those already described on page L-12.

iv. (vii. Incorrectly numbered in EFH consultation) Ensure that no more than one impact hammer is in operation at any given time during construction.

WSDOT/FHWA cannot comply with this conservation recommendation. The project is not constructible if only one impact hammer is used at any given time. This measure does not adequately differentiate between in-water or upland pile-driving activities, nor does it accurately reflect the project as described by WSDOT/FHWA in the biological assessments or the assumptions contained within the Tacoma HOV biological opinion.

The Description of the Proposed Action section of the Tacoma HOV biological opinion states for in-water pile-driving work in the Puyallup River: "Up to two crews (pile driving crews) may work from opposite sides of the river (page 10)... With two crews working simultaneously, up to 20 piles can be proofed with an impact hammer each day, for a total of approximately 300 hammer strikes per day." The Effects of the Action section in this same report is also based upon this same assumption (pages 82 and 83). On page 84 of the Tacoma HOV biological opinion, it states that these effects will be manifested over a period of 35 days between July 15 and August 31[WSDOT/FHWA notes that this is in fact a 45-day period] each year for three years during the construction of the three temporary work trestles.

d. Specific performance standards for Hylebos Creek and West Hylebos Creek include:
i. Conduct all pile driving activities occurring below OHWM within dewatered exclusion areas.

WSDOT/FHWA will comply with this conservation recommendation for Hylebos and West Hylebos Creeks as described in response to comment 1g above.

e. (b. Incorrectly numbered in EFH consultation) Contact the Services within 24 hours if the results of hydroacoustic monitoring indicate that the SPLs will exceed the extent of take exempted in the Opinion. The FHWA shall consult with the Services regarding modifications to the sound attenuation methodology in an effort to reduce the SPLs below the limits of take and continue hydroacoustic monitoring.

WSDOT/FHWA will partially comply with this conservation recommendation.

WSDOT/FHWA will comply with this conservation recommendation for monitoring within the Puyallup River.

WSDOT/FHWA cannot comply with this conservation recommendation at West Hylebos, Hylebos, and Wapato Creeks. No noise attenuation system or hydroacoustic monitoring will be implemented at West Hylebos, Hylebos or Wapato Creeks. No pile driving will occur within the

ordinary high water mark at Wapato Creek, and the proposed exclusion measures in West Hylebos and Hylebos Creeks discussed above (see response to comment 1g) will isolate pile driving activities to outside the wetted channel. The depths of the wetted channels adjacent to these activities will range from 6 to 24 inches. Though some noise will be propagated throughout the sediment at these locations, noise is not effectively propagated in shallow water depths, as is stated on pages 7-12 and 7-13 in the biological assessment prepared for Tacoma/Pierce County HOV Program: I-5 Port of Tacoma to King County Line – HOV: "Because the dominant frequencies generated in pile driving are between 50 and 1000 Hz, most of the energy will not be propagated in water depths of 0.4 meters (1.3 feet) or less (Urick, 1983). Therefore, sound energy from pile driving on this project will be reduced due to the shallow water depth."

3. ***The FHWA should minimize adverse effects from water quantity, water quality, and sediment quality degradation by ensuring that WSDOT will:***

    a. ***Comply with all elements specified in Term and Condition 3 of the ITS for the accompanying Opinion for the proposed action.***

WSDOT/FHWA will partially comply with this conservation recommendation.

WSDOT cannot comply with Term and Condition 3a in the Tacoma HOV biological opinion. It appears this language was derived from page 98 of the SR 167 biological opinion that was subsequently modified to reflect currently recognized olfactory thresholds. The methods referenced in 3a (FHWA Method, and WDOE Guidance of Conducting Mixing Zone Analysis) are outdated, and not currently used by WSDOT/FHWA or the Services for analyzing stormwater constituents.

WSDOT will comply with Term and Condition 3b as written in the Tacoma HOV biological opinion.

4. ***The FHWA should confirm that these conservation recommendations are effective in avoiding and minimizing adverse effects on EFH by ensuring that WSDOT will:***

    a. ***(b. Incorrectly numbered in EFH consultation) Comply with all elements specified in Term and Condition 4 of the ITS for the accompanying Opinion for the proposed action.***

WSDOT/FHWA will partially comply with this conservation recommendation.

WSDOT/FHWA cannot comply with Term and Condition 4.a.i in the Tacoma HOV biological opinion. WSDOT/FHWA already provided the Underwater Noise Monitoring Plan for its work in the Puyallup River to NMFS as Appendix L in the biological assessment prepared for the Tacoma HOV projects.

WSDOT/FHWA cannot comply with Term and Condition 4.a.ii in the Tacoma HOV biological opinion, as NMFS has already provided WSDOT/FHWA with the approved design specifications that must be employed. WSDOT/FHWA plans to use the design specifications that were provided by NMFS in the Tacoma HOV biological opinion in Appendix V, on pages V-2 and V-3 .

WSDOT will comply with Term and Condition 4.a.iii for monitoring within the Puyallup River. WSDOT/FHWA cannot comply with this conservation recommendation at West Hylebos, Hylebos, and Wapato Creeks (see response to comment 2e above).

WSDOT will comply with Term and Condition 4.a.iv for monitoring within the Puyallup River. WSDOT/FHWA cannot comply with this conservation recommendation at West Hylebos, Hylebos, and Wapato Creeks (see response to comment 2e above).

This concludes our response to Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Conservation Recommendations for the Tacoma HOV Project, Pierce County, Washington.

If you have any questions or require further information, please contact me at your earliest convenience.

Sincerely,

DANIEL M. MATHIS, P.E.
Division Administrator

By: Wendy L. McAbee, P.E., PMP
Area Engineer

Enclosure

Cc: Sandy Manning, U.S. Army Corps of Engineers
Marion Carey, WSDOT EAO
Carl Ward, WSDOT OR EHS
Carrie Berry, WSDOT HOV
Mike Grady, NOAA-NMFS

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
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Seattle, Washington 98115

NMFS Tracking No.:
2008/05448 and 2008/05581

April 24, 2009

Daniel M. Mathis
Division Administrator
Federal Highway Administration
Evergreen Plaza Building
711 S. Capitol Way, Suite 501
Olympia, Washington 98501

Re: Endangered Species Act Section 7 Consultation Biological Opinion and Magnuson-Stevens Fisheries Conservation and Management Act Essential Fish Habitat Consultation for the the Tacoma HOV Project, Pierce County, Washington. (Sixth Field HUC, 171100140599, Lower Puyallup River)

Dear Mr. Mathis:

On April 15, 2009, the Federal Highway Administration (FHWA) submitted comments to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (referred to hereafter collectively as the Services) on the terms and conditions specified in the biological opinion (Opinion) of the Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Tacoma HOV Project, Pierce County, Washington. (Sixth Field HUC, 171100140599, Lower Puyallup River) (NMFS Tracking No.: 2008/05448, 2008/05581. USFWS Log No.: 13410-2008-F-0582). In their comments, FHWA: 1) stated concern that several of the reasonable and prudent measures (RPMs) and term and conditions (T&Cs) "lacked clarity and specificity," potentially leading to ambiguous interpretation; 2) identified perceived inconsistencies and editorial errors; and 3) provided proposed revisions addressing their concerns.

NMFS is issuing this letter on behalf of the Services to provide the desired clarification. Concerns and proposed clarifications provided by FHWA are addressed below, organized by the relevant RPM or T&C (T&Cs and T&C elements for which no changes were proposed have been omitted):

Reasonable and Prudent Measures

…

1. ***Minimize incidental take from coffer dam installation, dewatering, and fish handling in the Puyallup River;***

   FHWA concern: In addition to the exclusion area created using a coffer dam, steel shaft casings will be placed in the Puyallup River to create exclusion areas around drilled shafts. FHWA expressed concern that this RPM and associated terms and conditions do not address these additional exclusion/isolation elements.

   NMFS response: NMFS acknowledges that the steel casings will form exclusion areas and that limited incidental take may occur during placement. However, NMFS believes that the likelihood of accidental capture of ESA-listed salmonids within the casings is extremely limited, as reflected in the anticipated level of take identified in the Opinion (Incidental Take Statement, p. 121). Further, NMFS believes that aside from adhering to the in-water work window specified in the project description, there are no other practicable measures for limiting this take. With regard to fish capture and handling, this RPM and related T&Cs apply only to the cofferdam enclosed exclusion area because NMFS believes that this activity cannot be practicably or safely implemented inside the steel casings. Therefore fish removal from the casings is not required, however any resulting take must be reported as specified and take exceeding the approved limits is grounds for reinitiation of consultation.

Terms and Conditions

…

1. ***To implement RPM Number 1 (coffer dam installation, dewatering, and fish handling in the Puyallup River), the FHWA shall ensure that WSDOT will:***

   FHWA proposes the following language change: "To implement RPM Number 1 (coffer dam installation, steel casing installation, dewatering, and fish handling in the Puyallup River), the FHWA shall ensure that WSDOT will:"

   NMFS response: NMFS accepts the language change to T&C 1 proposed by FHWA, with additional clarifications provided by subheading below.

   b. ***Conduct cofferdam dewatering in two to three stages, pausing between stages to accommodate fish removal.***

      FHWA proposes the following language change: "Conduct dewatering in exclusion/isolation activities in two to three stages, pausing between stages to accommodate fish removal."

NMFS response: As stated in our response under RPM 1, no practical measures for limiting take from casing installation have been identified beyond those included in the project description. Therefore the proposed language change does not apply. This T&C applies only to the cofferdam enclosed exclusion area.

c. Remove cofferdam materials only when turbidity levels within the work area are at or below background levels in the affected waterbody.

FHWA concern: The term "work area" is too broad. Turbidity levels within the work area, i.e. settling ponds and other stormwater treatment facilities in the action area may be higher than turbidity levels within the coffer dams, exclusion/isolation areas or in the Puyallup River.

FHWA proposes the following language change: "Remove coffer dam materials and steel casings only when turbidity levels within the exclusion/isolation areas are at or below background levels in the Puyallup River."

NMFS response: NMFS accepts that the term "work area" is overly broad, and that this T&C should also apply to steel casing removal. NMFS agrees to the changes to T&C 1.c. as proposed by FHWA.

2. To implement RPM Number 2 (Impact pile driving), the FHWA shall ensure that WSDOT will:

FHWA concern: Ambiguity regarding whether these T&Cs also apply to pile driving activities in the Wapato and Hylebos Creek systems.

FHWA proposes the following language change: "To implement RPM Number 2 (Impact pile driving in the Puyallup River), the FHWA shall ensure that WSDOT will:"

NMFS response: For the purpose of clarity and consistency with the language of RPM 2, NMFS accepts the language change proposed by FHWA.

It should be noted that, given the nature and timing of the activities in Wapato, Hylebos, and West Hylebos Creeks and related BMPs provided in the Project Description, NMFS has determined that the effects of pile driving in these systems will be insignificant and discountable (see Project Description pp. 13-14). Because there is no anticipated take, these activities were excluded from consideration in the Opinion. Therefore, by definition RPM 2, can only apply to pile driving activities in the Puyallup River.

a. Conduct all pile driving activities only during the period from July 15 to August 31.

FHWA concern: This condition could be interpreted to apply to pile driving activities on land as well as in the water.

FHWA proposes the following language change: "Conduct all in-water pile driving activities only during the period from July 15 to August 31."

NMFS response: NMFS accepts the language change proposed by FHWA, with the understanding that FHWA will adhere to all other pile driving-related work windows identified in the project description.

b. Conduct pile driving activities only during the period between one hour before sunrise and one hour after sunset.

FHWA concern: FHWA proposes no change to the language in the biological opinion. However this timing restriction differs from the timing described on page 11 the biological opinion, which states: "Pile driving work will occur during hours of daylight, leaving and eight to ten-hour period each night when no pile driving will occur."

NMFS response: While the language of the two identified statements is inconsistent, NMFS has assumed for the purpose of this consultation that they are similar in meaning. For the purpose of limiting take, the existing language of T&C 2.b. stands.

c. Specific performance standards for impact pile driving/proofing activities in the Puyallup River include:

FHWA proposes no change to the language in the Opinion.

ii. Employ an approved noise attenuation system consisting of a confined bubble curtain or any functionally equivalent or superior system. (See Appendix VII for NMFS approved confined bubble curtain specifications.)

FHWA concern: Pertinent noise attenuation system specifications are provided Appendix V and Appendix VIII of the Opinion, not Appendix VII as stated above. The Opinion does not contain an Appendix VII. It appears that Appendix VIII is incorrectly numbered in the Opinion and should have been Appendix VII.

FHWA proposes the following language change: **"**Employ an approved noise attenuation system consisting of a confined bubble

curtain or any functionally equivalent or superior system. (See Appendix V or VIII for NMFS approved confined bubble curtain specifications.)"

NMFS response: NMFS accepts the language change proposed by FHWA.

iii. Monitor attenuation system performance to ensure that pile driving noise levels do not exceed an average of 197 dB_{peak}, measured at mid-depth 10 meters from the piling.

FHWA proposes no change to the language in the Opinion. However, FHWA also stated that the Underwater Noise Monitoring Plan provided in the BA will be amended to address this additional requirement. This has bearing on NMFS' response to FHWA concerns regarding T&C 4.a.i.

3. To implement RPM Number 3 (water quantity and water quality degradation), the FHWA shall ensure that WSDOT will:

FHWA proposes no change to the language in the Opinion.

a. Provide the Services with the quantitative evidence that the stormwater discharges related to proposed action will not exceed 2.0 µg/L dissolved copper over background levels not exceeding 3.0 µg/L and 5.6 µg/L dissolved zinc over background levels between 3.0 µg/L and 13.0 µg/L, at the points of compliance in the Hylebos Creek system, the Hylebos Waterway, and the Blair Waterway. The analytical metric for demonstrating anticipated performance of the final design and installation of infrastructure that will not exceed these concentrations shall be a combination of the FHWA Method (WSDOT 2003a) and the WDOE Guidance for Conducting Mixing Zone Analyses (WDOE 2007a), or equivalent, and shall be performed consistent with respect to making conservative assumptions regarding BMP performance. Completed calculations, with all parameters, methods, and assumptions documented, and associated plans for stormwater treatment methods and facilities shall be submitted to NMFS for approval within 90 days prior to beginning construction of the project. If exceedences of these dissolved copper and dissolved zinc concentrations lead to NMFS disapproval, reinitiation of consultation is required.

FHWA concern: The language above references methods that are no longer used by FHWA/WSDOT for monitoring or modeling stormwater. FHWA/WSDOT requests that term and condition 3.a. be deleted, and requested that it be deleted during prior consultation discussions with NMFS. During consultation FWHA/WSDOT provided NMFS with the

language that appears in 3.b. below to more accurately reflect anticipated stormwater monitoring and to replace the language in 3.a.

NMFS response: NMFS agrees to delete existing T&C 3.a. as requested.

b. To satisfy the requirements identified above in 3(a), data and findings from WSDOT's Municipal Stormwater NPDES and State Waste Discharge General Permit will be used to estimate stormwater effluent concentrations within the project limits. As part of the NPDES monitoring effort, WSDOT and FHWA shall monitor and accurately characterize ("end-of-pipe") effluent/discharge concentrations (total and dissolved Cu, total and dissolved Zn, and TSS) from WSDOT stormwater facilities associated with WSDOT roadways. Sampling, data collection, analysis, and reporting (including quality control/quality assurance procedures) shall follow requirements from the permit. The Tacoma HOV project consists of two segments: the I-5: Port of Tacoma Road to King County Line segment that will be completed in 2011, and the I-5: M Street to Port of Tacoma Road segment that will be completed in 2017. WSDOT and FHWA shall submit to the NMFS and USFWS segment-specific estimates 1-3 years after completion, depending upon when data from the NPDES monitoring effort is available.

FHWA concern: FHWA requests that the reference to 3.a. in the first sentence of this term and condition be deleted.

NMFS response: NMFS agrees to the proposed language change. Please substitute the following for the first sentence of T&C 3.a.:

a. "The FHWA will use data and findings from WSDOT's Municipal Stormwater NPDES and State Waste Discharge General Permit to estimate stormwater effluent concentrations within the project limits…."

4. To implement RPM Number 4 (monitoring and reporting), the FHWA shall ensure that WSDOT will:

a. For all pile driving activities:

FHWA proposes the following language change: "For all in-water pile driving activities:"

NMFS response: NMFS agrees to the proposed language change.

i. Develop and implement a hydroacoustic monitoring plan to document the effectiveness of the approved sound attenuation system. Submit the monitoring plan to the Services for approval a

minimum of 60 days prior to initiation of impact pile driving activities.

FHWA concern: FHWA requests deletion of term and condition 4.a.i. As previously discussed, the hydroaccoustic monitoring plan was already provided to NMFS as part of the BA submittal.

NMFS response: NMFS concurs that the Underwater Noise Monitoring Plan described in FHWA's comments on T&C 2.c.i. is consistent with this requirement. However, in these same comments, FHWA also stated that this plan will address the additional requirements specified in this T&C. Therefore, NMFS agrees to the following language change for T&C 4.a.i.:

"Revise the Underwater Noise Monitoring Plan (Appendix L in the biological assessment prepared for Tacoma/Pierce County HOV Program: I-5 Portland Avenue to Port of Tacoma Road – Southbound HOV, I-5 Portland Avenue to Port of Tacoma Road – Northbound HOV) for consistency with the requirements specified in 2.c.i. Submit the revised plan to the Services for approval a minimum of 2 weeks prior to initiation of pile driving activities. Implement the plan as approved by the Services."

ii. Submit the design specifications for the selected sound attenuation system to the Services for approval a minimum of 60 days prior to initiation of impact pile driving activities. If alternative sound attenuation technologies (i.e., other than confined bubble curtains) are employed, provide additional information documenting the effectiveness of these technologies if available and appropriate.

FHWA concern: FHWA requests deletion of term and condition 4.a.ii. FHWA is using the design specifications provided by NMFS/USFWS in Appendices V and VIII of the Opinion.

NMFS response: To reflect the possibility that alternative noise attenuation systems may be used, NMFS substitutes the following language for T&C 4.a.ii:

"Should FHWA/WSDOT elect to use an alternative sound attenuation system (i.e., other than confined bubble curtains), FHWA will provide the specifications of this system to the Services for approval a minimum of 60 days prior to implementation. This submittal shall include any pertinent information documenting the effectiveness of this alternative system where available."

iii. Notify the Services within 24 hours if noise monitoring indicates that take limits are exceeded.

FHWA proposes the following language change: "Notify the Services within 24 hours if noise monitoring in Puyallup River indicates that take limits are exceeded."

NMFS response: NMFS accepts the proposed language change for T&C 4.a.iii, with additional modifications as follows:

"Notify the Services within 24 hours if preliminary results from noise monitoring in Puyallup River indicates that take limits will be exceeded."

iv. ***Submit hydroacoustic monitoring report to the Services for review within 120 days of the completion of monitoring activities.***

FHWA proposes the following language change: "Submit hydroacoustic monitoring report for pile driving activities in the Puyallup River to the Services for review within 120 days of the completion of monitoring activities."

NMFS response: NMFS accepts the proposed language change for T&C 4.a.iv.

The hydroacoustic monitoring plan, attenuation system specifications, and hydroacoustic monitoring results must be prepared and implemented by individuals with proven and appropriate expertise in the fields of underwater acoustics and sound attenuation technologies, the biological effects of hydroacoustic stressor exposure, and related data collection.

FHWA concern: FHWA proposes no changes to the language in the Opinion. However, FHWA/WSDOT requests clarification from NMFS/USFWS on what constitutes expertise related to "the biological effects of hydroacoustic stressor exposure."

NMFS response: WSDOT representatives on the Fisheries Hydroacoustic Working Group can identify the pertinent expertise requirements.

c. Prepare a stormwater monitoring plan consistent with the requirements detailed in 3(a) and 3(b). The plan shall include a statistically defensible sampling scheme and will be submitted to the Services for approval within 90 days prior to the initial discharge from the stormwater outfalls. The results of monitoring shall be submitted to the Services at

the end of the calendar years during which monitoring was conducted as specified in 4(d).

FHWA concern: FHWA requests that term and condition 4.c. be revised reflect the proposed deletion of term and condition 3.a. and the timing of anticipated monitoring results discussed in 3.b. (now 3.a.).

FHWA proposes the following language change: "Prepare a stormwater monitoring plan consistent with the requirements detailed in 3(a)."

NMFS response: NMFS accepts the proposed language change for T&C 4.c.

We hope that this clarifies any outstanding issues related to this consultation. Should you have any additional questions, please contact Mike Grady at (206) 526-4645.

Sincerely,

Barry A. Thom
Acting Regional Administrator

cc Wendy McAbee, FHWA
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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
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Reply To:
NMFS Tracking No.:
2009/05744

December 16, 2009

Daniel M. Mathis
Division Administrator
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Olympia, Washington 98501

Re: Reinitiation of Endangered Species Act Section 7 Formal Consultation for the for the Tacoma/Pierce County HOV Program, Pierce County, Washington (Sixth Field HUC, 171100140599, Lower Puyallup River).

Dear Mr. Mathis:

The National Marine Fisheries Service (NMFS) recently received and reviewed your request to reinitiate Endangered Species Act (ESA) consultation on the Tacoma HOV Program in Pierce County, Washington, pursuant to 50 CFR 402.16. NMFS also received your request for conference on the Southern Distinct Population Segment of eulachon, which was proposed for listing subsequent to completion of the Opinion. NMFS is not prepared to conference on this species at this time. The Tacoma HOV Program is a federally funded action being constructed by the Washington State Department of Transportation (WSDOT) as the non-federal designee of the Federal Highway Administration (FHWA).

On March 16, 2009, NMFS completed consultation on the Tacoma HOV Program and issued a joint Biological Opinion (Opinion) (NMFS Nos. 2008-05448 and 2008-05581). That consultation concluded that the proposed action would not jeopardize the continued existence of Puget Sound Chinook salmon, Puget Sound steelhead, or result in the destruction or adverse modification of designated critical habitat for Puget Sound Chinook salmon. The Opinion included an incidental take statement exempting take from coffer dam installation, dewatering, and fish handling in the Puyallup River; elevated sound levels resulting from impact pile driving in the Puyallup River; and stormwater discharges to Hylebos Creek, the Puyallup River, the Blair Waterway, the Hylebos Waterway, and the Thea Foss Waterway.

Subsequently, the FHWA determined that new information revealed effects of the action that may affect listed species in a manner or to an extent not previously considered. The FHWA responded to new information by modifying the proposed action to address those effects and therefore requested reinitiation. Specifically, the proposed action will result in greater floodplain storage and wetland impacts than analyzed in the original Opinion.

Since the proposed action addressed flood storage and wetland effects of the action through the inclusion of floodplain and wetland mitigation, FHWA now proposed to address the greater than anticipated effects by conducting the floodplain mitigation component of the action at a different and more ecologically-beneficial location.

The original proposed action called for compensatory mitigation for wetland and floodplain storage impacts at the Stillwater Floodplain Mitigation (SFM) site. The FHWA subsequently determined that the Clear Creek mitigation (CCR) site will satisfy all of the mitigation requirements resulting from impacts addressed in the Opinion and the additional impacts that were recently identified, and will provide greater ecological benefits for ESA-listed species than the SFM site. The CCR site is contiguous with Clear Creek, a tributary to the lower Puyallup River that provides habitat for Puget Sound (PS) Chinook salmon and PS steelhead. Therefore, the SFM site is removed from the action area and CCR site is now included in the action area.

Description of Changes to the Proposed Action

In the original consultation for this action, the FHWA had determined that the proposed action would entail permanent fill in 2.75 acres of fragmented wetland in the floodplain adjacent to I-5 (wetland C-1). The FHWA subsequently determined that the total fill will be 2.87 acres to accommodate the stormwater treatment infrastructure required under the original consultation. In addition, FHWA identified a calculation error in their analysis of the effects of floodplain fill on the flood storage capacity in the 100-year floodplain of the Puyallup River. The revised analysis indicates that the proposed action will result in a loss of 30.48 acre-feet of flood storage as opposed to the 4 acre-feet of storage loss derived in their original computations. Importantly for the purposes of the request to reinitiate, neither loss of flood storage nor wetland fill was determined to cause take of listed species considered in the original consultation. Instead, the effects of the construction of the mitigation site were anticipated to contribute to increased turbidity periodically, for a short time during and following construction and take for increased turbidity was assessed and exempted in the incidental take statement.

To ensure that loss of floodplain storage and wetland fill are adequately addressed after proposing the 0.12 acres of increased wetland fill and discovering the computation error, FHWA and WSDOT propose to relocate the wetland and floodplain mitigation projects to the CCR site. The revised mitigation plan will create a 4.8 acre floodplain wetland contiguous with Clear Creek. Up to 2.87 acres of the newly created wetland habitat is intended to mitigate for wetland impacts resulting from the proposed action. The remaining 1.9 acres of newly created wetland will be reserved for advance mitigation for future WSDOT projects in the vicinity. These may include additional Tacoma-Pierce County HOV Program projects, the SR 167 Extension project, and the SR 167 Corridor Project, each of which will require separate ESA consultation. In addition, the proposed CCR site will fully mitigate for the loss of floodplain storage resulting from the proposed action. The created wetland and adjacent buffer has been sized and contoured to increase the 100-year floodplain of the Puyallup River by 30.48 acre-feet. The CCR site will not provide advance mitigation capacity for future floodplain storage however, because the amount of new storage provided just replaces the loss in storage resulting from the proposed action.

The emergent areas of the wetland, adjacent wetland buffer, and surrounding riparian and upland habitats will be treated with soil amendments and replanted with a mixture of native vegetation appropriate for the range of habitat types created. The wetland will be connected to Clear Creek by a single 100-foot wide opening contiguous with the backwater channel. All site excavation, site contouring, placement of habitat features and soil amendments, and site replanting will be conducted behind a soil berm left in place to separate construction activities from Clear Creek. When construction and wetland replanting is completed, the berm will be breached at the mouth of the backwater channel. Prior to breaching, a turbidity curtain will be extended parallel to and against the stream bank across the breach site and the berm will be gradually excavated allowing the site to slowly flood. Berm breaching will take place during the July 16 to August 31 in-water work window under low water conditions. The turbidity curtain will be left in place throughout the site flooding process to prevent fish entrainment and to minimize inputs of suspended sediments to Clear Creek.

Construction equipment and materials and construction BMPs used at the CCR site will be similar to those described in the Opinion on the original proposed action. In addition, as noted above, vegetation maintenance and management will be conducted at the site consistent with the methods described in the Opinion. Construction of the CCR site is expected to produce a similar suite of direct and indirect effects to those addressed in the original consultation. However, these effects will occur at a different location thereby changing the dimensions of the action area.

Revised Action Area

The SFM site is no longer part of the proposed action and is removed from the action area. The terrestrial component of the action area is defined by construction noise and will encompass an irregularly bounded area around the CCR site extending between 700 and 2,500 feet (0.13 and 0.47 miles) from the source as determined by local topography and ambient noise sources. This extent partially overlaps the terrestrial component of the action area that surrounded the SFM site. The aquatic component of the action area adjacent to the CCR site extends from the upstream end of the construction limits in Clear Creek to approximately 200 feet downstream of the downstream limit of the CCR site. This component of the action area is defined by:

- Vegetation enhancements along 900 linear feet of Clear Creek channel;
- Bank disturbance and disruption of flow patterns in Clear Creek caused by breaching of 100 feet of berm to flood the constructed 4.8 acre wetland.
- Vegetation management, including use of herbicides on approximately 5 acres of riparian and wetland buffer restoration area located within 100 feet of aquatic habitats.
- Floodplain excavation and eventual levee breaching connecting Clear Creek to approximately 630 linear feet of backwater channel and 4.8 acres of adjacent floodplain wetland, and;
- Construction and measurable "first-flush" turbidity impacts extending from the upstream boundary of the CCR site 200 feet downstream of the downstream limit of the site.

Environmental Baseline

The environmental baseline for the action area remains unchanged since the completed of the original consultation. The Clear/Clarks Creek subbasin encompasses two tributary watersheds to the lower Puyallup River Basin. Only Clear Creek lies within the revised action area. Clear Creek drains into the Puyallup River via a flood gate in the levee system approximately 2,700 feet upstream of the existing I-5 bridges. Land uses influencing conditions in Clear Creek include low density residential, light agricultural, commercial, and industrial uses. The CCR site is located in a floodplain reach of Clear Creek approximately 0.8 miles upstream of the Puyallup River confluence. The area lies within the historical floodplain of the Puyallup River, but is isolated from the river by the levee system and the Burlington Northern Santa Fe railroad. Much of the surrounding area was hydromodified for agricultural development purposes. Historical floodplain wetlands were ditched and drained, and many of these artificial channels continue to convey runoff directly to Clear Creek. A sediment detention pond was excavated adjacent to lower Clear Creek in 1999 to contain excessive sediment produced by erosion in the Swan Creek ravine (Tacoma 2006). Lower Swan Creek and Clear Creek were restored in 2001 to provide improved in-channel and off-channel habitat.

The Clear Creek system supports spawning, rearing, and foraging for Chinook salmon and steelhead, among other salmonids (Marks et al. 2008). The action area has PS Chinook salmon and PS steelhead. The segment of Clear Creek within the limits of the CCR site has generally poor habitat conditions. The narrow riparian corridor is dominated by reed canary grass and Himalayan blackberry and generally lacks mature woody vegetation. The dominant vegetation within the floodplain wetland excavation area is primarily upland grasses growing on fill material. The Clear Creek channel adjacent to the and downstream of the CCR site is predominantly a migratory corridor with limited rearing habitat potential. Substrates are not suitable for spawning (Pierce County 2006).

According to Ecology's 303(d) Water Quality Assessment (2008), Clear Creek is listed as Category 5 (Impaired Waters) for fecal coliform bacteria, and Category 2 (Waters of Concern) for dissolved oxygen. Available data indicate that turbidity levels vary with stream flows, ranging from a low of 0.4 nephelometric turbidity units (NTU) at baseflow to as high as 97.3 NTU during storm flow conditions (Pierce County 2006). Finally, the Clear Creek basin is subject to urban stream and groundwater flooding (Pierce County 2008). The area surrounding the confluence of Clear Creek and the Puyallup River is prone to damaging floods, with the most recent occurring in January of 2009. Typical stream flows during the July 16 to August 31 in-water work window likely range between 10 and 15 cubic feet per second at the project location, based on mean continuous flow data measured at the closest available stream gauge (Pierce County 2006).

Effects on ESA-listed Species

The proposed CCR site will beneficially mitigate for anticipated wetland and flood storage impacts such that the net effect of this element of the proposed action will be beneficial in the long-term. The adverse effects of wetland fill on floodplain storage impacts will occur in areas

that are fragmented from functional aquatic habitats and effectively inaccessible to ESA-listed species. The proposed mitigation will provide an equivalent area and volume of wetlands and flood storage, respectively, and will increase the area of functional off-channel and riparian habitat on a key tributary system to the lower Puyallup River. Therefore, the long-term effect of the proposed mitigation is entirely beneficial. However, the construction of the CCR mitigation site will result in construction effects in Clear Creek that are typical of those produced by habitat restoration projects. These effects were discussed with respect to the SFM site in the Opinion (NMFS Nos. 2008-05448 and 2008-05581) and only differ now in that they will occur in and around the CCR site. The effects of mitigation site construction include site disturbance and increased turbidity during and after exposure to flood flows (e.g. the first-flush of restored areas following construction).

The likelihood and extent of PS Chinook salmon exposure to site disturbance is minimized by constraining work to the time of year when the most vulnerable lifestages are absent. However, the potential for PS steelhead exposure cannot be entirely discounted. Rearing juveniles may be present in the action area when curtain placement and berm breaching occur. The disturbance associated with turbidity curtain placement is likely to force juvenile steelhead occupying habitats in the immediate vicinity to relocate. Even in the absence of direct mortality, stress associated with capture and relocation has been shown to temporarily affect survival and fitness in ways sufficient to lead to indirect mortality. For example, relocation stress has been shown to cause increased plasma cortisol and glucose levels in affected individuals (Hemre and Krogdahl 1996; Frisch and Anderson 2000), and a decreased ability to detect and avoid predators lasting for up to 24 hours after release (Olla et al. 1995). Changes in territorial and feeding behaviors may also result as individuals investigate already occupied habitats. Increased vulnerability to predation caused by the physiological stress of capture and relocation, and the stress of habitat competition, can lead indirectly to increased mortality. It is also conceivable that individuals could respond to disturbance during curtain placement by hiding in underbank habitats. Individuals trapped between the turbidity curtain and the bank would remain trapped for extended periods, potentially sufficient to cause mortality.

In addition, the initial flooding of the restored floodplain habitat, and the first-flush of restored habitats by flood flows are expected to produce short-term elevations in suspended sediment concentrations within the restored wetland habitat and the Clear Creek channel. ESA-listed species in Clear Creek may be exposed to minor increases in suspended sediment concentrations during turbidity curtain placement and breaching of the berm separating the constructed habitat from the Clear Creek channel. Listed species may subsequently be exposed to elevated suspended sediment concentrations during the first-flush of restored habitats by the initial storm flows of the winter season following construction. Assuming that ESA-listed species occupy the restored habitat as anticipated, exposure may occur in both Clear Creek and in the mitigation site.

As noted in the *Environmental Baseline* section, available data indicate that baseline turbidity in Clear Creek is quite low under baseflow conditions and significantly higher during storm flows. Suspended sediment inputs are most likely to occur during turbidity curtain placement and berm breaching, which will take place under low flow conditions during the in-water work window,

and when areas disturbed by construction are exposed to a "first flush" during storm flow conditions.

Measurable suspended sediment impacts (i.e. changes in suspended sediment concentrations that are distinguishable from baseline conditions) are most likely to occur during low flows when baseline levels are lowest, and less likely to occur during high flows when baseline levels increase. Therefore, while the first-flush of the site will undoubtedly produce suspended sediment inputs, these inputs are unlikely to produce measurable changes in comparison to baseline sediment conditions present during storm flows given the nature of the site (i.e. a slack water off-channel habitat), and the design measures and BMPs implemented to minimize these effects. As such, NMFS concludes that first flush effects will not produce significant changes in suspended sediment conditions at the time that these impacts occur.

Considering the foregoing, changes in suspended sediment concentrations are likely to occur as a result of the proposed action, and that ESA-listed species, specifically PS steelhead, may be exposed. However, the nature of the site, the extent of disturbance producing activities, and the BMPs used to control sediment inputs, are reasonably certain to ensure that these effects will remain within the range of baseline conditions, although these include levels sufficient to produce behavioral and sublethal physiological effects in juvenile PS steelhead as Chinook will not be exposed. The most significant and extensive sediment effects (i.e. the largest measurable change from ambient conditions) are likely to occur during the in-water work window, and juvenile PS steelhead are the only listed species life history stage likely to be present in this component of the action area during this period. Measurable changes in suspended sediment concentrations may result from first-flush events when adult PS Chinook salmon are present in the vicinity, but these effects are likely to be limited to the aquatic habitats in the restored wetland where this life history stage is less likely to be present, and these effects are likely to be insignificant when considered relative to the elevated baseline turbidity levels present during storm flow conditions.

Therefore, NMFS concludes that the proposed action, revised to account for previously unanticipated effects, including the effects of changing the mitigation site location, will cause no additional take of PS Chinook salmon over that considered in the original consultation (NMFS Nos. 2008-05448 and 2008-05581) and will not appreciably reduce the likelihood of survival and recovery of PS Chinook salmon in the wild. Similarly, although the revised proposed action will cause some take of PS steelhead, anticipated take will accrue at the CCR site and not the SFM site, but will not exceed the extent anticipated in the original consultation and will therefore not jeopardize the continued existence of PS steelhead.

Incidental Take from Project Revisions

Although the extent of take is unlikely to depart that anticipated in NMFS Nos. 2008-05448 and 2008-05581, take of PS steelhead was described in the Opinion as an extent of habitat modified by the proposed action. To ensure the record on the Tacoma HOV Program remains current, NMFS assessed to take of PS steelhead anticipated from the proposed revision. The *Incidental Take Statement* in the Opinion is revised as follows to reflect exposure to short-term disturbance

and suspended sediment impacts anticipated to result from the changes to the proposed action identified in this reinitiation of consultation.

The following actions which produce a physical extent of take are exempted from the take prohibitions of the ESA, consistent with the provisions of ESA Section 7(o) and the findings of this statement:

1. Behavioral disturbance, physiological stress, and accidental mortality associated with disturbance of surface waters during turbidity curtain placement, and the subsequent breaching of the berm enclosing the restored floodplain habitats, limited to:
    - Within 3 feet of the north bank of Clear Creek along a 150-foot segment of the CCR site overlapping the berm breaching location.
2. Suspended sediments in excess of environmental baseline conditions during riparian enhancement, turbidity curtain placement, and berm breaching activities during construction and the first-flush of disturbed and restored habitats during high flows, limited to:
    - The 630-foot long backwater channel in the restored floodplain wetland on the CCR site;
    - the 900 foot segment of Clear Creek adjacent to the CCR site, and;
    - within 200 feet of the downstream limit of turbidity curtain placement and berm breaching activities.

To ensure the action agency will minimize this specific extent of take, NMFS makes the following reasonable and prudent measures (RPMs) to avoid and minimize take associated with the proposed changes to the action.

1. FHWA shall minimize incidental take associated with turbidity curtain placement and berm breaching activities.
2. Minimize incidental take associated with increases in suspended sediment concentrations resulting from project construction.
3. Monitor, as specified, to document take and compliance with the Terms and Conditions as specified, and report monitoring results to NMFS.

To achieve the foregoing RPMs, FHWA shall implement the following Terms and Conditions.

1. To implement RPM Number 1, incidental take associated with turbidity curtain placement and berm breaching activities, the FHWA/WSDOT shall:

    a. Conduct these activities under the lowest available flow conditions during the approved in-water work window.

    b. Place the turbidity curtain by drawing it tightly against the bank to avoid accidental entrapment of fish between the curtain and the bank.

c. Use a backpack electroshocker to clear fish from underbank habitats where they may be accidentally trapped during turbidity curtain placement, consistent with the following:

i. The directing biologist will meet the minimum requirements specified in the WSDOT Fish Exclusion Protocols and Standards (WSDOT 2009).

ii. Electrofishing will be conducted using the minimum setting necessary to compel fish to abandon underbank habitats (i.e. the setting sufficient to induce galvanotaxis without stunning).

d. Secure the ends of the curtain tightly to the bank to prevent fish access between the curtain and the bank (once complete, the middle of the curtain may be drawn no more than three feet away from the bank as necessary for berm breaching).

e. Berm breaching will be conducted gradually and in stages to prevent the turbidity curtain from overtopping during inflow.

f. To avoid accidental capture and entanglement of fish during removal, the turbidity curtain will be removed by drawing it onto the bank from the upstream end.

2. To implement RPM Number 2, minimize incidental turbidity impacts, the FHWA/WSDOT shall:

a. Monitor turbidity conditions 200 feet downstream of the downstream limit of turbidity curtain placement and berm breaching activities.

b. If turbidity produced by these activities exceeds 5 NTU over baseline conditions, or exceeds 10 percent over baseline conditions exceeding 50 NTU:

i. Halt the activity and allow turbidity to dissipate to below 5 NTU above baseline levels;

ii. Revise BMPs to minimize turbidity where practicable before continuing.

c. Allow turbidity levels within the restored wetland to dissipate to or below baseline levels in Clear Creek before removing the turbidity curtain.

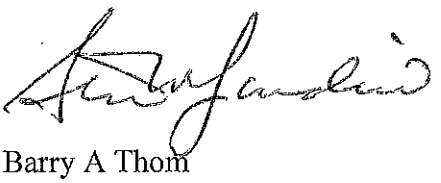
3. To implement RPM Number 7, monitoring, the FHWA/WSDOT shall:

a. Document all listed salmonids encountered during turbidity curtain placement and removal and berm breaching activities by submitting In-water Construction Monitoring Report forms (see Opinion Appendix VI), or equivalent, for these activities to the Services within 30 days of turbidity curtain removal.

b. Provide a report to NMFS summarizing the results of turbidity monitoring and describing any BMP modifications associated with turbidity curtain placement and removal and berm breaching at the CCR site within 30 days of turbidity curtain removal.

This concludes reinitiated consultation on the Tacoma HOV Program. If you have any questions, please contact Michael Grady at NMFS WSHO at (206) 526-4645, by e-mail at michael.grady@noaa.gov, or by mail at the letterhead address.

Sincerely,



for Barry A Thom
Acting Regional Administrator

cc Dean Moberg, FHWA
Carrie Berry, WSDOT, Olympic Region HOV Program Office
Pat Svoboda, WSDOT, ESO Megaprojects
Carl Ward, WSDOT, ESO Olympic Region

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STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

November 16, 2007

Dr. Barbara Bundy
Archaeologist
WSDOT
P.O. Box 47332
Olympia, WA 98504-7332

In future correspondence please refer to:
Log: 111607-23-FHWA
Property: Tacoma/Pierce HOV Project: M St, Puyallup River Bridge, and T St Utility
Re: Archaeology - APE Concur

Dear Dr. Bundy:

We have reviewed the materials forwarded to our office for the above-referenced segment of the Tacoma/Pierce HOV project. Thank you for your description of the area of potential effect (APE) for the project. We concur with the definition of the APE. We look forward to the results of your cultural resources survey efforts, your consultation with the concerned tribes, and receiving the survey report. We would appreciate receiving any correspondence or comments from concerned tribes or other parties that you receive as you consult under the requirements of 36CFR800.4(a)(4) and the survey report when it is available.

These comments are based on the information available at the time of this review and on behalf of the State Historic Preservation Officer in conformance with Section 106 of the National Historic Preservation Act and its implementing regulations 36CFR800. Should additional information become available, our assessment may be revised. Please note that DAHP has developed a set of cultural resource reporting guidelines. You can obtain a copy of these guidelines from our Web site. Thank you for the opportunity to review and comment. Should you have any questions, please feel free to contact me.

Sincerely,

Matthew Sterner, M.A., RPA
Transportation Archaeologist
(360) 586-3082
matthew.sterner@dahp.wa.gov

Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

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January 4, 2008

The Honorable Charlotte Williams, Chair
Muckleshoot Indian Tribe
39015 172nd Ave SE
Auburn, WA 98092

Re: Tacoma/Pierce HOV Program

Dear Chairwoman Williams,

The Federal Highway Administration and Washington State Department of Transportation is planning and designing the Tacoma/Pierce HOV Program. We invite you to respond to this letter acknowledging your interest in participating in this project as a consulting party. For your information we have enclosed APE's for three areas of our project. They include:

Nalley Valley Project:

- Westbound Nalley Valley
- Eastbound Nalley Valley and Sprague Avenue Interchange
- I-5: SR 16 – I-5 Realignment
- I-5 – Nalley Valley HOV Structure and Connections

Tacoma Projects:

- I-5: M Street to Portland Avenue – Northbound I-5 Widening and Bridges
- I-5: M Street to Portland Avenue – Southbound I-5 Widening and HOV Lanes
- I-5: Northbound Puyallup River Bridge Replacement
- I-5: Southbound Puyallup River Bridge Replacement
- I-5: Tacoma – T Street Utility Protection

Fife Projects:

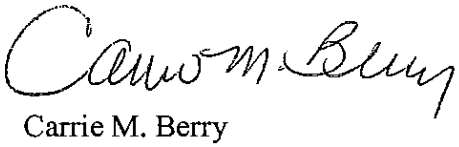
- I-5: Port of Tacoma Interchange to King County Line – HOV Lanes Project

WSDOT is re-evaluating the Environmental Assessment it prepared for the projects in summer of 1999. As a part of this process the project team is updating many of the projects' discipline reports as well. Among other issues, we would like consultation to address cultural and historic resource issues, pursuant to Section 106 of the National Historic Preservation Act 36 CFR 800.2(c)(4). Recognizing the government-to-government relationship, which the Federal Highway Administration has with the Tribe, they will continue to play a key role in this undertaking as the responsible Federal agency. If this project requires a permit from the US Army Corps of Engineers (USACE), this consultation will also serve to meet their Section 106 responsibilities. However, since the WSDOT has been delegated the authority from FHWA to initiate consultation and we will be directly managing the cultural resources studies and carrying out this undertaking, you may contact FHWA or USACE at anytime for assistance with the process and/or the undertaking.

The goal of the consultation is to identify any concerns early in the environmental review process and reach mutually agreeable decisions while taking into account the interests of both the Tribal, State and Federal governments.

Thank you for taking the time to consider these requests. I will be in touch with your office in the coming weeks to inquire about scheduling a meeting to discuss these matters further. In the meantime, if you have any questions, please contact me at (360) 709-8147 or berryc@wsdot.wa.gov.

Sincerely,



Carrie M. Berry
HOV Environmental Manager

cc: Laura Murphy, Muckleshoot Cultural Resources, w/attachments
Isabel Tinoco, Muckleshoot Natural Resources, w/ attachments
Karen Walter, Muckleshoot Natural Resources w/ attachments
Bryan Dillon, Federal Highway Administration, w/ attachments
Sandra Manning, US Army Corps of Engineers w/ attachments
Diane Lake, US Army Corps of Engineers w/o attachments

Squaxin Island Tribes declines to Consult on Tacoma HOV.txt

From: Beeby, Megan
Sent: Friday, January 11, 2008 10:34 AM
To: Berry, Carrie; Shufelt, Sarah
Subject: Squaxin Island Tribes declines to Consult on Tacoma HOV

Follow Up Flag: Follow up
Flag Status: Red

Hi Carrie and Sarah,

I received a message late last night (1/10/08) from Rhonda Foster at the Squaxin Island Tribe. They declined to consult on the Tacoma HOV projects. They are very busy with a cemetery relocation and are not interested in consulting on projects in the Puyallup Territory. Please document this in the project files. Please let me know if you'd like me to forward the voice mail.

Thanks,

Megan Beeby
WSDOT Environmental Services Tribal Liaison
PO Box 47331
Olympia, WA 98504
(360) 705-7494 office
(360) 705-6833 fax

FW For the tribal consultation record.txt

From: Berry, Carrie
Sent: Thursday, January 17, 2008 8:18 AM
To: Shufelt, Sarah
Subject: FW: For the tribal consultation record

From: Beeby, Megan
Sent: Thursday, August 09, 2007 3:54 PM
To: Berry, Carrie
Subject: For the tribal consultation record

Hi Carrie,

Please add this to the consultation record:

Matt Mattson, Tribal Administrator for the Snoqualmie Nation, spoke with Megan Beeby and declined to consult on the Tacoma HOV project (or any other projects going through the Puyallup Reservation)

Johnson Meninick, Cultural Resources Director for the Yakama Nation spoke with Megan Beeby and said they would leave it to the local tribes to comment on the project.

Thanks,
-Megan

Megan Beeby
WSDOT Environmental Services Tribal Liaison
PO Box 47331
Olympia, WA 98504
(360) 705-7494 office
(360) 705-6833 fax

Shufelt, Sarah

From: Thor A. Hoyte [hoyte.thor@nisqually-nsn.gov]
Sent: Thursday, February 07, 2008 3:22 PM
To: Shufelt, Sarah
Subject: Tacoma Pierce County HOV projects

I understand there will be no ROW acquisition in the Nisqually ceded territory. Therefore we have no interest as a consulting party for this project.

Thor A. Hoyte
Office of the Tribal Attorney
Nisqually Indian Tribe
4820 She-Nah-Num Drive SE
Olympia, Washington 98513
telephone (360) 486.9545
cell (360) 480.3362
facsimile (360) 486.9543

Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

Olympic Region
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April 21, 2008

Cynthia Lyman
Puyallup Tribe of Indians
3009 E. Portland Avenue
Tacoma, WA 98404

Re: Tacoma/Pierce County HOV Program Cultural Resources Area of Potential Effect and Study Area

Dear Ms. Lyman:

The purpose of this letter is to follow-up on WSDOT's cultural resources consultation efforts with the Historic Preservation Department of the Puyallup Tribe of Indians and respond to your request for further information on the Tacoma/Pierce County HOV Program "study areas" for cultural resource reporting. We hope this letter will address your questions about the difference between how we define the Area of Potential Effect and the "study areas".

On April 11, 2008, WSDOT staff met with Historic Preservation Department staff to discuss the Area of Potential Effect (APE) associated with WSDOT's Port of Tacoma to King County Line HOV Project, otherwise referred to as the "Fife Project." This was our first meeting about the Fife Project APE. During this meeting, the Historic Preservation group identified some areas of concern that lie outside of the APE as defined by the Section 106 of the National Historic Preservation Act, but do lie within the larger Fife Project study area. One such area was the St. Georges Cemetery, which lies north to northwest of the King County Line, approximately one mile north of the northernmost extent of our Fife Project APE. This parcel is in the vicinity of the Gethsemane Cemetery, and is held in Trust by the Puyallup Tribe of Indians.

Methods for Determining the Area of Potential Effect

For projects within WSDOT's Tacoma/Pierce County HOV Program, we have adopted the definition of project APEs as set forth in 36 Code of Federal Regulations 800.16d. In the federal regulations, APEs are defined as:

> *Geographic area or areas within which an undertaking may directly or indirectly cause change of character of use of historic properties (i.e.*

> *archaeological sites, traditional cultural properties [TCPs], and historic buildings and/or structures. The APE is influenced by the scale and nature of an undertaking* (36CFR800.16d).

WSDOT has a specific definition of an APE boundary line for its projects. That definition is one tax parcel, or 200 feet (whichever is smaller), from the proposed construction footprint (i.e. horizontal or vertical ground disturbance). That area accounts for some indirect effects to historic properties that could occur, such as ground vibration.

Study Area

WSDOT recognizes that areas of cultural significance may lie outside this APE buffer line. Those areas outside the APE buffer are called "study areas." We intend to do full background research, including sufficient background study and consultation, to understand the history of the study area associated with the Fife and Tacoma Projects. The APE is found within the boundary of the study area, but the study area does not comprise the APE.

To further clarify the difference between the APE and the study area, I have included graphics for your convenience. For our projects, we have defined the study area as a one-half mile (2,640 feet) radius from the midpoint of our project footprint, as shown on Exhibits A and B. WSDOT intends to research and report on locations of cultural importance identified by the Puyallup Tribe of Indians that fall outside the APE but within the broader study area. That information will be included in the Historic, Cultural and Archaeological Resources Discipline Reports of the archaeological field survey. Once completed, those reports will be submitted to the Puyallup Tribe of Indians for review and comment. Within our project APE, we will use industry standard methods to archaeologically test areas that have potential to be affected by our project's proposed horizontal/vertical ground disturbance. We will not conduct archaeological testing outside the APE.

Tacoma Projects APE

The Tacoma/Pierce County HOV Program has also defined APEs for three projects along I-5 in Tacoma. Those projects, known as the "Tacoma Projects," are:

- I-5: M Street to Portland Avenue
- I-5: Portland Avenue to Port of Tacoma Road – Southbound HOV
- I-5: Portland Avenue to Port of Tacoma Road – Northbound HOV

Within the Tacoma Projects APE, one site listed on the Washington Heritage Register exists: the Cushman Cemetery (45PI580). This site was recommended eligible for the National Register of Historic Places (NRHP) in the early 1970s. The exact date is unknown and was not included on the NRHP Inventory Nomination Form. As previously

discussed in our Tacoma APE consultation meetings, our Cultural Resource Specialist suggested that we record the Cushman Cemetery as an historic cemetery/burial site in a State of Washington Archeological Site Inventory Form. An example of this form is shown in Exhibit C. This action would compile and report the most current information available about this important site. Our Cultural Resource Specialist has respectfully asked that she be allowed to work with the Puyallup Tribe of Indians Tribal Historian to accomplish this task.

Future Consultation

We look forward to meeting again with the Historical Preservation Department on both the Tacoma Projects and Fife Projects APE. Following these discussions, we hope to consult with the Historical Preservation Department on the archaeological testing plan for the Tacoma Projects APE, and initiate a request with the Puyallup Tribe of Indians for another Right of Entry Permit to conduct archaeological testing.

If you would like further clarification about APE vs. study areas, or have questions about the Tacoma/Pierce County HOV Program, please feel free to contact me directly at 360-709-8147.

We look forward to working with the Puyallup Tribe of Indians in the future as we move ahead with Tacoma/Pierce County HOV Program projects.

Sincerely,

Carrie M. Berry
Environmental Manager
Tacoma/Pierce County HOV Program

Enclosures: Exhibit A – Tacoma Study Area
Exhibit B – Fife Study Area
Exhibit C – State of Washington Archaeological Site Inventory Form

Cc: Raul Ramos, PTOI w/enclosures
Judy Wright, PTOI w/enclosures
Jeffrey Thomas, PTOI w/enclosures
Thomas Edwards, PTOI w/enclosures
Wendy McAbee, FHWA w/enclosures
Matthew Sterner, DAHP w/enclosures
Allyson Brooks, SHPO w/out enclosures
Jeff Sawyer, OR EHS w/out enclosures
Megan Beeby, ESO w/enclosures
Tacoma/Pierce County HOV Program Document Library w/enclosures

LAW OFFICE
of the
PUYALLUP INDIAN TRIBE

June 25, 2008

Ms. Carrie M. Berry, Environmental Manager
Tacoma/Pierce County HOV Office
724 Quince Street SE, Suite 206
Olympia, WA 98504-8147

RE: Stage One Discussion Points to Determine the Area of Potential Effect for the Tacoma/Pierce County HOV project

Dear Ms. Carrie Berry,

On June 11, 2008, the Puyallup Tribe (Tribe) met with WSDOT. Because the Tribe believes that the consultation process pursuant to the National Historic Preservation Act, Section 106 process had become unproductive, the Cultural Resources Department offered to outline the outstanding concerns that are necessary in order to reach agreement. There are two stages in this approach, the first addressing the Area of Potential Effect (APE) and the second identifying historic properties that exist within the agreed upon APE. Below please find Stage One. Stage two will be sent once the APE has been determined and agreed upon.

S.106 Area of Potential Effect Determinations

1. The mixing and/ or absence of discussion regarding the different project areas within the Pierce County HOV program are troubling to the Tribe. (For example, Nalley Valley, Tacoma and Fife have been discussed simultaneously, and/or the Tribe is still uninformed regarding either the Tacoma Mall area expansion work or work involving other areas which are within the Tribe's Usual and Accustomed areas (U&A). In addition, the two reaches associated with the Tacoma project area and the Fife project area encompass a 7-mile stretch but discussion so far has been limited to a one-mile reach.

2. The I-5 HOV "final design" is uncertain (e.g. no bridge design has been selected) therefore decisions regarding alternatives (which depend on the final design) and the selection of the appropriate APE are compromised.

<u>Tacoma Mile Post 132.9 through 135.9 (3 miles)</u>

3. The reach encompassing MP 132.9 to 134.9 (2 miles) has never received direct discussion.

4. The proposed "APE" involving the Portland Avenue intersection's work does not extend one parcel beyond the project footprint.

5. The eastern boundary of the "Tacoma" proposed APE at MP 135.9 does not specifically match with the western boundary of the "Fife" proposed APE at MP 135.9.

3009 East Portland Avenue • Tacoma, Washington 98404 • (253) 573-7877 • Fax (253) 680-5998

6. Continuing uncertainty about the footprint of the approach to the Puyallup River bridge-- whichever design is finally approved--will impact how the cultural resources of the Tribe will be affected, as well as how the APE can be defined. The Tribe cannot comment on unavailable information.

7. Wherever road relocation of the I-5 footprint occurs, the road abandonment must be acknowledged and the abandoned footprint included within the APE (the boundary should occur at least one parcel beyond the footprint line).

8. Wherever road abandonment occurs, assessment of the abandoned road footprint will be conducted. Standard professional techniques which include shovel probes shall be emphasized.

9. The western boundary of the proposed "Tacoma" APE does appear to not match the proposed " Fife" APE because the" Tacoma" proposed APE does not accommodate the "one-parcel guideline " provided by WSDOT.

Fife Milepost 135.9 through 139.57

10. Similar to problems identified in the "Tacoma" area, the Tribe anticipates that the lack of final design will hinder stakeholder's ability to finalize the best and most reasonable boundaries for the HOV project's APE (especially in near the Tribe's Fife casino zone).

11. There is a lack of consistency in applying WSDOT's "One-parcel guideline". At least four locations along the "Fife" project pathway do not appear to honor this guideline.

Section 106 Identification of Historic properties-Tacoma

STAGE TWO- TO BE DETERMINED

Identification of Historic Properties seems to be occurring in conjunction with, rather than after, finalization of the APE. The Tribe's perception is that it is premature to initiate the identification work without having finalized the APE. Once the APE context is established, the Tribe will proceed with the identification of Historic Properties within that APE (as per Section 106 guidelines).

Sincerely,

Cynthia Lyman
Tribal Attorney

cc: Peter Mills
Judy Wright
Jeff Thomas
Thomas Edwards

Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

Olympic Region
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www.wsdot.wa.gov

July 25, 2008

Cynthia Lyman, Tribal Attorney
Puyallup Tribe of Indians
3009 East Portland Avenue
Tacoma, Washington 98404

RE: Discussion Points to Determine the Area of Potential Effect (APE) for the Tacoma/Pierce County HOV Program

Dear Ms. Lyman: Cynthia

Thank you for your letter dated June 25, 2008 regarding the Area of Potential Effect (APE) for projects within the Tacoma/Pierce County HOV Program. I appreciate you taking the time to put your comments in writing to help us get on a productive track. The purpose of this letter is to respond to your comments, and also update you on our recently selected mitigation site for the Tacoma Projects, the Stillwater Mitigation Site. This site will now be included as part of our Tacoma Projects APE (Exhibit A-1).

The HOV Program is very complicated and I apologize for the confusion that it has caused the Tribe. The HOV Program is divided into three basic areas with several construction contracts in each area. Each of the basic areas has a separate APE.

The following comments are numbered to correspond numerically with those that were received.

Area of Potential Effect Determinations

1. TACOMA PROJECTS
In October of 2007 WSDOT and FHWA initiated consultation and requested comment from the Puyallup Tribe of Indians on the "Tacoma Projects APE", to be constructed in the following projects-

- I-5: M Street to Portland Avenue- HOV
- I-5: Portland Avenue to Port of Tacoma Road- Northbound HOV
- I-5: Portland Avenue to Port of Tacoma Road- Southbound HOV

The HOV Program and FHWA have met with the PTOI to specifically discuss the Tacoma Projects APE on February 5, 11th, and March 5th 2008. During these meetings the Historical Preservation group identified areas of concern that were incorporated into the APE, including the Clay Creek drainage, Casino, Cushman Cemetery, and the parcel just east of the Cushman Cemetery and Bay Street.

If the Historical Preservation Department has additional areas of concern within the Tacoma Projects APE that were not identified during the recent letter to WSDOT or within the previous meetings with WSDOT and FHWA, we again invite the PTOI to provide comment in writing so we can ensure that everyone's interests are being taken into account as we move forward with finalizing the Tacoma Project APE.

NALLEY VALLEY PROJECTS
Any construction planned in the Tacoma Mall area was covered in the Nalley Valley APE, and is being constructed in the following projects-

- I-5/SR 16: Westbound Nalley Valley
- I-5/SR 16: Eastbound Nalley Valley
- I-5/SR 16: HOV Connectors Project.

WSDOT invited the Tribe to consult on the Nalley Valley APE in our letter dated July 5, 2006 (copy enclosed). WSDOT followed up with phone calls to Judy Wright and left voice messages. The Tribe did not respond to either the letter request for comments or phone calls. On August 8, 2007 Carrie Berry notified Jeffrey Thomas and Judy Wright that WSDOT would begin the archaeological fieldwork for the Project the following week and on August 13, 2007 our archaeological consultant, Jim Bard, contacted Jeffrey Thomas and invited him to participate in the fieldwork.

On January 25, 2008 WSDOT submitted the Historic, Cultural and Archaeological Resources Discipline Report (including the results from the survey work) to the Tribe and the Department of Archaeology and Historic Preservation. On March 6, 2008 DAHP concurred with WSDOT's No Adverse Effect Determination.

FIFE PROJECT
WSDOT and FHWA met with the Historical Preservation Department to discuss the Fife Project APE on April 10, 2008. Limited discussion regarding scheduling the Fife Project APE occurred towards the end of the March 5, 2008 meeting on the Tacoma APE.

2. During the last Interdisciplinary Team Meeting on June 11, 2008 between the PTOI, WSDOT, FHWA, USACE and W&H Pacific, WSDOT presented on the preferred alternative for the Puyallup River bridge design that has been selected based on the findings from the Type, Size and Location analysis completed. The current APE in the vicinity of the existing bridge spans an area of more than 1000 feet, easily accommodating the horizontal construction footprint of either the preferred concrete girder bridge with piers in the water design, or alternatively, the clear span design. Regardless of the design chosen, the proposed ground disturbance location is the same, and it seems that all parties are in agreement that this location will require thorough archaeological testing. WSDOT would like to move forward with finalizing the APE in

these areas of agreement, and if additional information becomes available, or our project footprint changes, we will continue to consult with the PTOI, FHWA and DAHP to revise the APE as appropriate.

Tacoma Mile Post 132.9 through 135.9 (3 miles)

3. WSDOT and FHWA have met with the Tribe to specifically discuss the Tacoma Projects APE on February 5, 11th, and March 5th 2008. If the Tribe has additional areas of concern within the Tacoma Projects APE that have not been identified we again invite the Tribe to provide comment in writing so we can ensure that the Tribe's interests are being considered as we move forward with finalizing the Tacoma Project APE.

4. Attached is a map that includes your suggested change to increase the APE at the Portland Avenue intersection to one parcel beyond the footprint (Exhibit A1-A4).

5. WSDOT also made changes to Tacoma Project APE and Fife Project APE maps to ensure the boundaries match. The revised versions are attached (Exhibit A1-A4 & B1-B3).

6. The proposed ground disturbance location is the same for the either bridge design type at the Puyallup River and it seems that all parties are in agreement that this location will require thorough archaeological testing.

7. Change has been made to Tacoma Project APE to extend the APE out one parcel from the abandoned road footprint.

8. WSDOT will conduct archaeological assessment of the abandoned road footprint.

9. The APE at the western boundary of the Tacoma Projects APE at milepost 132.9 has been extended to accommodate the one parcel guideline. The eastern boundary of the Tacoma Projects APE where it meets the Fife Projects APE has been modified; please see attachments.

Fife Milepost 135.9 through 139.57

10. Fife Project design is complete and limited to the existing WSDOT right-of-way.

11. WSDOT reviewed and changed the Fife APE to ensure that the proposed APE is one tax parcel from the proposed construction footprint. The revised APE is attached.

Stage Two- Identifying Historic Properties

The historic structure inventory has been completed in the APE's that were previously approved by DAHP. WSDOT will be inventorying the historic structures to include the

newly expanded APE boundaries as described above. WSDOT would like the Tribe's input and assistance in identifying culturally significant properties within the APE's. We also need to receive comment from the Tribe on the 2008 version Unanticipated Discovery Plan for the HOV Program.

I look forward to continuing the formal Section 106 Consultation with the Tribe. If you have any further questions or need further project specific information, please call me at (360) 709-8147 or email me at berryc@wsdot.wa.gov.

Sincerely,

Carrie M. Berry
Environmental Manager
Tacoma/Pierce County HOV Office

CC: Judy Wright, PTOI
Thomas Edward, PTOI
Jeffrey Thomas, PTOI
Raul Ramos, PTOI
Peter Mills, PTOI
Bill Sullivan, PTOI
Scott Williams, WSDOT
Wendy McAbee, FHWA
Matthew Sterner, DAHP
Sandy Manning, USACE
Project File

Enclosures- Copy of Nalley Valley APE consultation letter dated July 5, 2006.
Exhibit A1-A4, revised Tacoma Projects APE.
Exhibit B1-B4, revised Fife Project APE.

Washington State Department of Transportation

Paula J. Hammond, P.E.
Secretary of Transportation

Olympic Region
Tacoma/Pierce County HOV Office
724 Quince St. SE, Suite 206
P.O. Box 47376
Olympia, WA 98504-7376

(360) 709-8130
TTY: 1-800-833-6388
www.wsdot.wa.gov

August 27, 2008

Mrs. Judy Wright
Puyallup Tribe of Indians
3009 East Portland Ave.
Tacoma, WA 98404

Certified Mail No. 7007-2560-0000-1850-4319
RE: Revised APE Concurrence for "Tacoma" and "Fife" HOV Projects
Project: I-5: M Street to Portland Avenue- HOV
I-5: Portland Avenue to Port of Tacoma Road- Northbound HOV
I-5: Portland Avenue to Port of Tacoma Road- Southbound HOV
I-5: Port of Tacoma Road to King County Line- HOV

Dear Mrs. Wright:

Attached are the final APE maps sets for both the Tacoma and Fife Project APE's, for your records. You will see that these final maps incorporate the changes suggested by the Historical Preservation Department. I also recently notified the Department of Archaeology and Historic Preservation of the updated changes.

You will receive the archaeological testing plan for the Fife and Tacoma Projects next week in the mail. The map sets in these documents are being updated by WSDOT to reflect the final APE boundaries.

After we have the opportunity to discuss the testing plans, WSDOT will request a letter from the Puyallup Tribe authorizing the cultural survey work on tribal land, to provide to the Bureau of Indian affairs so that WSDOT can obtain the necessary Archaeological Resources Protection Act permit.

If you have any further questions or need further project specific information, please contact me at (360) 709-8152.

Sincerely,

Sarah Shufelt
Cultural Resource Specialist
Tacoma/Pierce County HOV Office

CC:
Project File
Honorable Herman Dillon/PTOI
Thomas Edwards/PTOI
Jeffrey Thomas/PTOI
Cynthia Lyman/PTOI
Peter Mills/PTOI
Raul Ramos/PTOI
Carrie Berry/WSDOT w/out enclosures
Elizabeth Lagerburg/ATG
Scott Williams/WSDOT w/out enclosures
Megan Beeby/WSDOT w/out enclosures
Mathew Sterner/DAHP
Sandy Manning/USACE
Wendy McAbee/FHWA

Enclosures:
"Tacoma Projects" APE map set
"Fife Project" APE map set

spuyaləpabš čəɬ

Puyallup Tribe of Indians

HISTORIC PRESERVATION DEPARTMENT

February 26, 2009

To whom it may concern,

The recent discovery of cultural material near the Emerald Queen Casino by representatives from Washington State Department of Transportation as well as the Puyallup Tribe is an important discovery for the history of the Puyallup Tribe. Following these findings, the Puyallup Tribe Historic Preservation Department researched what village sites could possibly have been discovered, and following hours of research, it is believed that this material is the remnants of the main village. To honor our ancestors and commemorate the hard work of all involved, it is therefore recommended by the staff of the Puyallup Tribe Historic Preservation Department that this historic site be given the name:

šaɬčq̓ad (shaw-tch-kod). šaɬčk̓ad was one of four village sites that made up this "main village". **ƒwadəbcab, spuyaləpabš** and **kalkalgʷ** were the other villages.

Please let us know if we may be of any further assistance in getting this site on the National Register. It is sights like this one, which not only enrich the people of the Puyallup Tribe, but the general community as a whole as they learn the history of the area in which they live.

Sincerely,

Judy Wright
Tribal Historian

Brandon Reynon
Tribal Archaeologist/
Cultural Regulatory Spc.

Amber Santiago
Research Assistant

Sheryl Mellus
Outreach Specialist

3009 East Portland Avenue • Tacoma, WA 98404 • (253) 573-7986 • (253) 573-7820 Fax

Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

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December 30, 2009

Anthony O. Wright
Seattle District Commander
U.S. Army Engineer District, Seattle
P.O. Box 3755
Seattle, WA 98124-3755

Re: Final Memorandum of Agreement for WSDOT Tacoma/Pierce County HOV Program

Dear Commander Wright:

The Washington State Department of Transportation would like to thank the United States Army Corps of Engineers for their participation in meeting Section 106 requirements and creating a Memorandum of Agreement for projects in WSDOT's Tacoma/Pierce County HOV Program.

Enclosed for your records is the final Memorandum of Agreement with an original signatory page of all consulting parties.

If you have questions, please contact HOV Environmental Manager Carrie Berry at 360-709-8147. More information about the overall Tacoma/Pierce County HOV Program can be found at www.tacomatraffic.com.

We look forward to working with the United States Army Corps of Engineers in the future as we move ahead with Tacoma/Pierce County HOV Program projects.

Sincerely,

John Wynands, P.E.
Assistant Regional Administrator
Tacoma/Pierce County HOV Program

Enclosure – Final Memorandum of Agreement with original signatory page

cc: Danielle Storey, w/copied enclosure
Sandra Manning, w/copied enclosure

SIGNATORIES:

Federal Highway Administration

_____ Date 12-21-2009

For Daniel M. Mathis, Division Administrator

United States Army Corps of Engineers, Seattle District

_____ Date 28 DEC 2009

Anthony O. Wright, Seattle District Commander

Washington State Historic Preservation Officer

_____ Date 12/21/09

Allyson Brooks, Ph.D.
State Historic Preservation Officer

INVITED SIGNATORIES:

Puyallup Tribe of Indians

_____ Date 12/17/09

Honorable Herman Dillon, Tribal Chair

Washington State Department of Transportation

_____ Date 12/16/09

Kevin Dayton, Regional Administrator

Washington State Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

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www.wsdot.wa.gov

December 30, 2009

Dr. Allyson Brooks
State Historic Preservation Officer
Department of Archaeology and Historic Preservation
P.O. Box 48343
Olympia, WA 98504-8343

Re: Final Memorandum of Agreement for WSDOT Tacoma/Pierce County HOV Program

Dear Dr. Brooks:

The Washington State Department of Transportation would like to thank Washington State Department of Archaeology and Historic Preservation for their participation in meeting Section 106 requirements and creating a Memorandum of Agreement for projects in WSDOT's Tacoma/Pierce County HOV Program.

Enclosed for your records is the final Memorandum of Agreement with an original signatory page of all consulting parties.

Shortly, you will also receive a copy of WSDOT's final Data Recovery Plan, which was reviewed by the Puyallup Tribe Historic Preservation Department and the Washington State Department of Archaeology and Historic Preservation.

If you have questions, please contact HOV Environmental Manager Carrie Berry at 360-709-8147. More information about the overall Tacoma/Pierce County HOV Program can be found at www.tacomatraffic.com.

We look forward to working with the Washington State Department of Archaeology in the future as we move ahead with Tacoma/Pierce County HOV Program projects.

Sincerely,

John Wynands, P.E.
Assistant Regional Administrator
Tacoma/Pierce County HOV Program

Enclosure – Final Memorandum of Agreement with original signatory page

SIGNATORIES:

Federal Highway Administration

_____ Date 12-21-2009

For Daniel M. Mathis, Division Administrator

United States Army Corps of Engineers, Seattle District

_____ Date 28 DEC 2009

Anthony O. Wright, Seattle District Commander

Washington State Historic Preservation Officer

_____ Date 12/21/09

Allyson Brooks, Ph.D.
State Historic Preservation Officer

INVITED SIGNATORIES:

Puyallup Tribe of Indians

_____ Date 12/17/09

Honorable Herman Dillon, Tribal Chair

Washington State Department of Transportation

_____ Date 12/16/09

Kevin Dayton, Regional Administrator

Washington State Department of Transportation
Paula J. Hammond, P.E.
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December 30, 2009

Daniel M. Mathis, Division Administrator
Federal Highways Administration
Suite 501 Evergreen Plaza
711 South Capitol Way
Olympia, Washington 98501

Re: Final Memorandum of Agreement for WSDOT Tacoma/Pierce County HOV Program

Dear Mr. Mathis:

The Washington State Department of Transportation would like to thank the Federal Highways Administration for their participation in meeting Section 106 requirements and creating a Memorandum of Agreement for projects in WSDOT's Tacoma/Pierce County HOV Program.

Enclosed for your records is the final Memorandum of Agreement with an original signatory page of all consulting parties.

If you have questions, please contact HOV Environmental Manager Carrie Berry at 360-709-8147. More information about the overall Tacoma/Pierce County HOV Program can be found at www.tacomatraffic.com.

We look forward to working with the Federal Highways Administration in the future as we move ahead with Tacoma/Pierce County HOV Program projects.

Sincerely,

John Wynands, P.E.
Assistant Regional Administrator
Tacoma/Pierce County HOV Program

Enclosure – Final Memorandum of Agreement with original signatory page

cc: Dean Moberg, w/copied enclosure

SIGNATORIES:

Federal Highway Administration

_____ Date 12-21-2009

For Daniel M. Mathis, Division Administrator

United States Army Corps of Engineers, Seattle District

_____ Date 28 DEC 2009

Anthony O. Wright, Seattle District Commander

Washington State Historic Preservation Officer

_____ Date 12/21/09

Allyson Brooks, Ph.D.
State Historic Preservation Officer

INVITED SIGNATORIES:

Puyallup Tribe of Indians

_____ Date 12/17/09

Honorable Herman Dillon, Tribal Chair

Washington State Department of Transportation

_____ Date 12/16/09

Kevin Dayton, Regional Administrator

Washington State Department of Transportation
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December 30, 2009

The Honorable Herman Dillon, Sr.
Puyallup Tribe of Indians
3009 E. Portland Avenue
Tacoma, WA 98404

Re: Final Memorandum of Agreement for WSDOT Tacoma/Pierce County HOV Program

Dear Chairman Dillon, Sr.:

The Washington State Department of Transportation would like to thank the Puyallup Tribe of Indians for their participation in meeting Section 106 requirements and creating a Memorandum of Agreement for projects in WSDOT's Tacoma/Pierce County HOV Program.

Enclosed for your records is the final Memorandum of Agreement with an original signatory page of all consulting parties.

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If you have questions, please contact HOV Environmental Manager Carrie Berry at 360-709-8147. More information about the overall Tacoma/Pierce County HOV Program can be found at www.tacomatraffic.com.

We look forward to working with the Puyallup Tribe of Indians in the future as we move ahead with Tacoma/Pierce County HOV Program projects.

Sincerely,

John Wynands, P.E.
Assistant Regional Administrator
Tacoma/Pierce County HOV Program

Enclosure – Final Memorandum of Agreement with original signatory page

cc: Judy Wright, PTOI, w/copied enclosure
Brandon Reynon, PTOI, w/copied enclosure
Peter Mills, PTOI, w/copied enclosure

SIGNATORIES:

Federal Highway Administration

_____ Date 12-21-2009

For Daniel M. Mathis, Division Administrator

United States Army Corps of Engineers, Seattle District

_____ Date 28 DEC 2009

Anthony O. Wright, Seattle District Commander

Washington State Historic Preservation Officer

_____ Date 12/21/09

Allyson Brooks, Ph.D.
State Historic Preservation Officer

INVITED SIGNATORIES:

Puyallup Tribe of Indians

_____ Date 12/17/09

Honorable Herman Dillon, Tribal Chair

Washington State Department of Transportation

_____ Date 12/16/09

Kevin Dayton, Regional Administrator