Appendix D: Concurrence Letters

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

OCT 2 5 2004

Michelle Steinmetz
Biology Program Manager - WSDOT
I-405 Corridor Program Office
600-108th Avenue NE, Suite 405
Bellevue, Washington 98004

Dear Ms. Steinmetz:

This letter is in response to the request for informal consultation on the Interstate 405 (I-405) Congestion Relief and Bus Rapid Transit Project between State Route (SR) 522 and SR 520 in King County, Washington. Your letter and enclosed Biological Assessment (BA), dated August 10, 2004, and received in our office on August 11, 2004, requests U.S. Fish and Wildlife Service (Service) concurrence with the determination of "may affect, not likely to adversely affect" for the bull trout (*Salvelinus confluentus*). It is our understanding that this request is being submitted to us by the Washington State Department of Transportation (WSDOT), I-405 Project Office on behalf of the Federal Highway Administration. This informal consultation has been conducted in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The WSDOT has determined that the project will have "no effect" on the bald eagle (*Haliaeetus leucocephalus*). There is no requirement for Service concurrence. Your determination that this project will have no effect on the bald eagle rests with the action agency; therefore, consultation on this species is not required.

The WSDOT is proposing to widen I-405 for a distance of 8 miles from the north side of the I-405/SR 520 interchange to the south side of the I-405/SR 522 interchange. As part of the project the I-405/ NE 116th Street interchange will be realigned and local roadways will be modified. Stormwater will be managed for water quality treatment and detained by upgrading conveyance systems. The project is anticipated to begin in mid 2005 and be completed by 2011.

We believe sufficient information has been provided to determine the effects of the proposed project to federally listed species and to conclude whether this project is likely to adversely affect those species. Our concurrence would be based on information in the BA, draft Wildlife and Vegetation, and Water Quality discipline reports, the Land Use Analysis document, the additional information received via electronic mail on October 20, 2004, and at a meeting with WSDOT on October 13, 2004, complete and successful implementation of the conservation and performance measures described in the BA, and the following rationale.

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The proposed project will occur in the Lake Washington Watershed, and will directly impact a number of tributaries to Lake Washington: Forbes, Juantia, and North Creeks and the Sammamish River. The habitat within the project/action area supports foraging, migratory and overwintering bull trout. Bull trout have been detected in Lake Washington and some of its tributaries. Bull trout using the action area would be adult and subadult anadromous bull trout from bull trout core areas/subpopulations to the south (i.e., Puyallup) and north (i.e., Stilliguamish, Snohomish and Skagit). Bull trout would most likely occur in the Lake Washington tributaries in response to foraging opportunities on juvenile or spawning salmon.

The project will result in the addition of a culvert under I-405 and the redirection of Forbes Creek. This work will occur upstream of three fish migration barriers. Bull trout and their prey downstream of these barriers may be exposed to temporary increases in sediment. The in-water work will be timed to occur such that it will not coincide with any salmon spawning (prey) and will be conducted during the warmest time of the year, when bull trout would be least likely to occur in these areas. Given the timing and the low number of bull trout detections in the Lake Washington Basin, the probability of exposure of bull trout to construction-related activities is extremely remote and therefore effects are discountable.

The proposed project will result in the addition of 14 acres of new impervious surface. Impervious surfaces and their resultant stormwater will alter hydrologic functions of the stream systems within the action area and may expose bull trout to contaminated stormwater runoff. The project proposes to treat stormwater runoff from a portion of existing and new impervious surfaces (43 acres in total). With the proposed stormwater treatment facilities, the annual amount of total suspended solids in the runoff is expected to decrease by 70 percent from existing baseline condition. No more than 80 acres of vegetation will be removed as part of this project. All areas in which vegetation removal will occur, with the exception of the new impervious surface (approximately 14 acres), will be re-vegetated. Areas with mixed forest will not be removed for temporary use (i.e., staging). Areas of mixed forest that will be permanently removed will be replaced with plantings of native tree and shrub species (acre for acre) within the action area. With the proposed stormwater treatment and the replacement of vegetation, the effects of the new impervious surface on pollutant loading and hydrology are expected to be insignificant.

To expedite the environmental review process, if the Federal Highway Administration concurs with the effect determinations for listed species, then you may consider this action to be in compliance with requirements of 50 CFR 402.13, thereby concluding the consultation process. The project should be reanalyzed if new information reveals effects of the action that may affect listed species or critical habitat in a manner, or to an extent, not considered in this consultation. The project should also be reanalyzed if the action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this consultation, and/or a new species is listed or critical habitat is designated that may be affected by this project.

If you have further questions about this letter or your responsibilities under the Endangered Species Act of 1973, as amended, please contact Jennifer Quan at (360) 753-6047 or John Grettenberger at (360) 753-6044, of this office.

Sincerely,

for Ken S. Berg, Manager
Western Washington Fish and Wildlife Office

cc:
FHWA – Olympia (J. Leonard)
WDFW Region 4
WSDOT – ESO, Olympia (P. Wagner, M. Carey)

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

NMFS Tracking No.:
2004/00886

October 28, 2004

Michelle Steinmetz
Biology Program Manager
WSDOT - Urban Corridors Office
401 2nd Ave. S., Suite 560
Seattle, WA 98104-3850

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation: I-405 Congestion Relief and Bus Rapid Transit Projects - SR522 to SR520 Lower and Middle Sammamish River HUCs, 171100120301 and 171100120401.

Dear Mrs. Steinmetz:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA). Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Endangered Species Act

NOAA's National Marine Fisheries Service (NOAA Fisheries) has reviewed the Biological Assessment (BA) and Essential Fish Habitat (EFH) assessment for the above referenced project received on August 10, 2004, and additional information received on September 30, 2004. According to the amended BA, the Washington State Department of Transportation (WSDOT) is proposing to widen I-405 for a distance of eight miles from the north side of the I-405/SR522 interchange to the south side of the I-405/SR520 interchange. The I-405/NE 116th Street interchange will be realigned and local roadways will be modified, as necessary, for interchange improvements. Additionally, the project proposes reconstruction of the NE 116th street bridge over the Burlington Northern Santa Fe railroad tracks, and the associated on and off ramps, along with construction of new retaining walls along portions of northbound NE 116th street. The construction activities will be phased over six years beginning in 2005 and ending in 2011.

The project will add a northbound general-purpose lane from the I-405/NE 70th interchange to the I-405/NE 124th Street interchange and a southbound general purpose lane from the I-405/SR522 interchange to the I-405/SR520 interchange. The proposed project will add 13.57 acres of new impervious surface. The WSDOT will use enhanced water quality treatment to treat 13.51 acres of new impervious surface and retrofit an additional 43.42 acres of presently untreated impervious surface. Approximately 47 acres of clearing and grading will be required. Clearing will impact less than 3.0 acres of Type III wetlands. Five potential wetland mitigation

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sites are being evaluated to fully compensate for the loss of wetland functions. The project will require approximately 165,000 cubic yards of cut and 105,000 cubic yards of fill. A new culvert will be constructed at Forbes Creek that will provide fish passage under I-405 and will help to normalize stream flows.

The action area extends from a wetland mitigation site on North Creek (at approximately River Mile 4.0), one mile north of the I-405/SR522 interchange to approximately one half mile south of the I-405/SR520 interchange. It extends approximately one mile east of the I-405 Corridor and includes the headwaters of Yarrow, Forbes, and Juanita Creeks, and the Sammamish River. It then extends west to Lake Washington. The action area includes adjacent riparian zones within the construction area and all areas affected by the project, including staging areas. North Creek is a tributary to the Sammamish River; both of which support Puget Sound (PS) chinook (*Oncorhynchus tshawytscha*) salmon, listed as threatened under the ESA.

The WSDOT has determined that the project "may effect, but not likely to adversely effect" PS chinook. During consultation, the WSDOT identified the following measures to be taken to avoid and minimize the potential effects of the project:

1) Work below the ordinary high water mark (OHWM) will be conducted during the Washington State Department of Fish and Wildlife (WDFW) work window, June 15 through September 30.

2) A Spill Prevention Control and Countermeasures (SPCC) plan will be developed and implemented for the project to ensure that all pollutants and products are controlled and contained.

3) The contractor will develop, implement, and maintain a Temporary Erosion Sediment & Control (TESC) plan for the project to prevent sediments from entering water bodies during construction.

4) During the construction period, no disturbance beyond the marked clearing limits will take place.

5) Projects that require bank stabilization (i.e. application of riprap at the Forbes Creek/I-405 culvert) will follow the Washington State Aquatic Guidelines Integrated Streambank Protection Guideline (2003).

6) All impacted wetlands will be replaced at ratios dictated by state and local regulatory standards.

7) The WSDOT will incorporate stormwater design procedures from the Washington State Department of Ecology (Ecology) Stormwater Management Manual for Western

Washington, Volumes I-V, August 2001. The WSDOT will incorporate Best Management Practices (BMPs) per the 2004 WSDOT Highway Runoff Manual (HRM) to treat runoff from the project.

8) The removal of riparian vegetation will be limited to the least extent possible. The re-vegetation with native plant species will occur in the first growing season after project completion and will be monitored for 5 years.

9) No staging areas will be located within 300 feet of any wetland, stream, or river.

10) All temporary storage piles will be covered by appropriate BMPs to prevent sediments from entering surface waters.

11) The installation of riprap and other material will occur from the streambank and outside the wetted perimeter.

12) All concrete will be poured in dry conditions, or within confined waters not connected to surface waters, and will be allowed to cure a minimum of 7 days before contact with surface waters.

13) Concrete, mixing, pouring, and concrete truck cleanout areas will be established to properly contain wet concrete and washwater.

14) All fueling activities will occur more than 300 feet from the nearest wetland, drainage ditch, or surface water body.

Puget Sound chinook salmon are not expected to be in the action area during the in-water work window, and the direct and indirect effects of the action on habitat for PS Chinook Salmon are considered to be discountable or insignificant. NOAA Fisheries therefore concurs with your effect determination of "may affect, but not likely to adversely affect" for PS chinook salmon. NOAA Fisheries' concurrence is based on the description of activities and conservation measures identified above and included in the amended BA, and are contingent upon full implementation of the project and conservation measures as proposed.

The regulations (50 CFR 402.08) implementing section 7 of the ESA of 1973, as amended, allow a Federal agency to designate a non-Federal representative to conduct informal consultations or prepare BAs by giving written notice to the Director of such designation. NOAA Fisheries has received the letter written May 10, 1999 from Federal Highways Administration (FHWA), Gene Fong, Division Administrator, so designating WSDOT as their non-Federal representative. The ultimate responsibility for compliance with section 7 remains with FHWA.

This concludes informal consultation on these actions in accordance with 50 CFR 402.14(b)(1). The FHWA must re-analyze this ESA consultation: (1) if new information reveals effects of the action that may affect listed species in a way not previously considered; (2) if the action is modified in a manner that causes an effect to the listed species that was not previously considered; or (3) if a new species is listed or critical habitat designated that may be affected by the identified actions.

Magnuson-Stevens Fishery Conservation and Management Act

Federal agencies are required, under section 305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NOAA Fisheries regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect EFH. The MSA (section 3) defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." If an action would adversely affect EFH, NOAA Fisheries is required to provide the Federal action agency with EFH conservation recommendations (MSA section 305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal action agency and descriptions of EFH for Pacific salmon contained in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan (August 1999) developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

The proposed project is described in the amended BA submitted by the WSDOT. The proposal encompasses habitats that have been designated as EFH for various life stages of Chinook and coho salmon (*O. kisutch*).

EFH Conservation Recommendations: Because the habitat requirements for the MSA-managed species in the action area are similar to those of the ESA-listed species, and because the conservation measures that FHWA/WSDOT included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse effects to designated EFH, conservation recommendations pursuant to MSA (section 305(b)(4)(A)) are not necessary. Since NOAA Fisheries is not providing conservation recommendations at this time, no 30-day response from FHWA/WSDOT is required (MSA section 305(b)(4)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NOAA Fisheries' EFH conservation recommendations, FHWA/WSDOT will need to reinitiate consultation in accordance with the implementing regulations for EFH at 50 CFR 600.920(l).

If you have any questions, please contact Sean Callahan of my staff at the Washington State Habitat Office at (206) 525-6121, by e-mail at sean.callahan@noaa.gov, or by mail at the letterhead address.

Sincerely,

Robert D. Lohn
Regional Administrator

cc: Paul Wagner, WSDOT HQ Biology
Kimberly Farley, WSDOT UCO

STATE OF WASHINGTON

Office of Archaeology and Historic Preservation

1063 S. Capitol Way, Suite 106 • PO Box 48343 • Olympia, Washington 98504-8343 • (360) 586-3065
Fax Number (360) 586-3067 • http://www.oahp.wa.gov

June 8, 2004

Mr. Craig Holstine
Department of Transportation
310 Maple Park Avenue SE
PO Box 47300
Olympia, Washington 98504-7332

Log No.: 060804-08-FHWA
Re: I-405 Congestion Relief & Bus Rapid Transit Projects
No Federal Aid # Assigned

Dear Mr. Holstine:

We have reviewed the materials forwarded to our office for the proposed I-405 Congestion Relief & Bus Rapid Transit Projects in King County, Washington. Thank you for your description of the Area of Potential Effect (APE). We concur with your definition of the Area of Potential Effect. We look forward to the results of your consultation with the concerned tribes and receiving the survey report.

These comments are based on the information available at the time of this review and on behalf of the State Historic Preservation Officer for compliance with Section 106 of the National Historic Preservation Act and its implementing regulations 36CFR800. 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).

Should additional information become available, our assessment may be revised. In the event that archaeological or historic materials are discovered during project activities, work in the immediate vicinity should be discontinued, the area secured, and the tribe's cultural committee and this office notified. Thank you for the opportunity to comment.

Sincerely,

Robert G. Whitlam, Ph.D.
State Archaeologist
(360) 586-3080
email: robw@cted.wa.gov

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STATE OF WASHINGTON

Office of Archaeology and 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

February 14, 2005

Ms. Connie Walker-Gray
Cultural Resources Specialist
WSDOT Urban Cooridors
600 108th Avenue NE
Suite 405
Bellevue, WA 98004

In future correspondence please refer to:
Log: 021405-01-FHWA
Property: I-405 Kirkland Nickel Project
Re: Concur with APE

Dear Ms. Walker-Gray:

We have reviewed the materials forwarded to our office for the above referenced project. Thank you for your description of the area of potential effect 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 as of July 1, 2005, OAHP will be requiring the use of OAHP Archaeology Site Forms for all archaeological survey projects. You can obtain a copy of the Archaeology Site form from our website at www.oahp.wa.gov. Also note that as of January 1, 2005, OAHP requires that all historic property inventory forms provided to our office be submitted in an electronic version using the Historic Property Inventory Database. Please call me if you have any questions.

Sincerely,

Russell Holter
Project Compliance Reviewer
(360) 586-3533
russellh@cted.wa.gov

STATE OF WASHINGTON

Office of Archaeology and Historic Preservation

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(Mailing Address) PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 Fax Number (360) 586-3067

February 17, 2005

Ms. Christina Martinez
Environmental Manager
WSDOT Urban Corridors
600 108th Avenue NE
Suite 405
Bellevue, WA 98004

In future correspondence please refer to:
Log: 021405-01-FHWA
Property: I-405 Kirkland Nickel Project
Re: No Adverse Effect

Dear Ms. Martinez:

Thank you for contacting the Washington State Office of Archaeology and Historic Preservation (OAHP). The above referenced project has been reviewed on behalf of the State Historic Preservation Officer under provisions of Section 106 of the National Historic Preservation Act of 1966 (as amended) and 36 CFR Part 800. My review is based upon documentation contained in the communication sent to us by your Cultural Resources Specialist, Connie Walker-Gray, dated, February 10, 2005.

We concur with the findings of your consultant, HRA, that the George Shaw house located at 11807 Bothell-Woodinville Road, Bothell; and the Bell-Miller house located at 16017 Juanita-Woodinville Way NE (now demolished), are ELIGIBLE for inclusion to the National Register of Historic Places.

We also concur that the following properties are NOT ELIGIBLE:

Kearns property located at 124th St. NE, T27R05E Sect 30; Bothell
Parsell house located at 11325 E Riverside Drive, Bothell
Gorbes-Forster house 9258 Slater Ave NE, Kirkland
Gorbes-Forster guesthouse 9258 Slater Ave NE, Kirkland

The Forbes Lake sunken dock and the Furney property are not historic properties. Furthermore, out-structures such as the Gorbes-Foster garage and the Kearns pig house need to be evaluated in the context of their associated structures, therefore, they cannot be evaluated for National Register eligibility on their own merits. Please have your consultants refer to the OAHP Site Type Guide when filling out historic property inventory forms. A copy of this guide can be found at our website: www.oahp.wa.gov.

I concur that the current project, as proposed, will have "NO ADVERSE EFFECT" on National Register eligible or listed historic and cultural resources. If additional information on the project becomes available, or if any archaeological resources are uncovered during construction, please halt work in the area of discovery and contact the appropriate Native American Tribes and OAHP for further consultation.

Please note that as of January 1, 2005, OAHP requires that all historic property inventory forms provided to our office be submitted in an electronic version using the Historic Property Inventory Database. If you have not registered for a copy of the database, please log onto our website at www.oahp.wa.gov and go to the Survey/Inventory page for more information and a registration form. As of July 1, 2005, we will also require the use of OAHP Archaeology Site Forms for all archaeological survey projects. You can obtain the Archaeology Site form on our website as well.

Thank you for the opportunity to review and comment. Should you have any questions, please feel free to contact me.

Sincerely,

Russell Holter
Project Compliance Reviewer
(360) 586-3533
russellh@cted.wa.gov