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**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING LANE WIDENING OF HIGHWAY 101, MARIN AND SONOMA
COUNTIES, CALIFORNIA**

WHEREAS, the Federal Highway Administration (FHWA), has determined that improvements to a portion of State Highway 101 between Novato in Marin County and Petaluma in Sonoma County (California Department of Transportation Expenditure Authorization 264000), California (Undertaking) will have an adverse effect on archaeological sites CA-MRN-526 and CA-MRN-196 and may affect archaeological site CA-MRN-327, which the FHWA has determined, in consultation with the California State Historic Preservation Officer (SHPO), to be eligible, under Criterion D, for inclusion in the National Register of Historic Places (National Register) and therefore, an historic property as defined at 36 CFR § 800.16(1)(1); and

WHEREAS, the FHWA has consulted with the SHPO pursuant to stipulations X.B.1.a, X.C, and XI of the January 2004 *Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California (PA)*, and has notified the Advisory Council on Historic Preservation (AChP) of the adverse effect finding in pursuant to 36 CFR § 800.6(a)(1); and

WHEREAS, the FHWA has thoroughly considered alternatives to the Undertaking, has determined that the statutory and regulatory constraints on the design of the Undertaking preclude the possibility of avoiding adverse effects to archaeological sites CA-MRN-526 and CA-MRN-196 during the Undertaking's implementation, and has further determined that it will resolve the adverse effect of the Undertaking on the subject historic properties through the execution and implementation this Memorandum of Agreement (MOA); and

WHEREAS, the California Department of Transportation (Caltrans) has participated in the consultation and has been invited to concur in this MOA; and

WHEREAS, Caltrans, on the behalf of the FHWA, has initiated consultation with the Federated Indians of Graton Rancheria regarding the Undertaking and its effects on CA-MRN-526, CA-MRN-196 and CA-MRN-327; will continue to consult with them, and will afford them, should they so desire, the further opportunity to more directly and actively participate in the implementation of the Undertaking itself and this MOA;

NOW, THEREFORE, the FHWA and the SHPO agree that, upon FHWA's decision to proceed with the Undertaking, FHWA shall ensure that the Undertaking is implemented in accordance with the following stipulations in order to take into account the effects of

1 the Undertaking on historic properties, and that these stipulations shall govern the
2 Undertaking and all of its parts until this MOA expires or is terminated.

3
4
5 **STIPULATIONS**
6

7 The FHWA shall ensure that the following measures are carried out:
8

9 **I. AREA OF POTENTIAL EFFECTS**
10

11 A. The area of potential effects (APE) for the Undertaking is depicted in Appendix A of
12 the March 2007 Finding of Adverse Effect (FOE) for the Marin-Sonoma Narrows
13 Project. The archaeological and architectural history APE limits are based upon the
14 project footprint. The APE encompasses the areas of project effects and the recorded
15 archaeological site limits. The APE map has been appended as Attachment 1 to this
16 MOA. Attachment 1 set forth hereunder may be amended through consultation
17 among the MOA parties without amending the MOA proper.
18

19 **II. TREATMENT OF HISTORIC PROPERTIES**
20

21 A. Caltrans shall ensure that the effects of the Undertaking on archaeological sites CA-
22 MRN-526, CA-MRN-196 and CA-MRN-327 are resolved by implementing the
23 procedures described in the May 2008 *Treatment Plan for Archaeological Sites CA-*
24 *MRN-196 and CA-MRN-526 As Part of the Marin-Sonoma Narrows Project, Marin*
25 *and Sonoma Counties, California* (Treatment Plan). Data recovery is prescribed for
26 archaeological deposits contributing to the National Register eligibility of this historic
27 property within the Undertaking's construction ADI. The Treatment Plan has been
28 appended to this MOA as Attachment 2.
29

30 B. In order to eliminate the potential to affect contributing deposits of the sites where
31 data recovery is not prescribed, Caltrans will protect those contributing portions of
32 CA-MRN-526, CA-MRN-196 and CA-MRN-327 by identifying them as
33 environmentally sensitive areas (ESAs), which shall be described in information
34 included in the final construction plans of the Undertaking, and by enclosing in the
35 temporary fencing the remainder of the site areas located outside the area of direct
36 impact. Caltrans shall ensure that the integrity of the fence line as installed throughout
37 the duration of the construction activities in the site vicinity.
38

39 C. Any party to this MOA may propose to amend the Treatment Plan. Such amendment
40 will not require amendment of this MOA. Consultation on Treatment Plan
41 amendments will be no longer than 30 days in duration.
42

43 D. The FHWA will not authorize the execution of any Undertaking activity that may
44 affect (36 CFR § 800.16(i)) historic properties in the Undertaking's APE prior to the
45 completion of the fieldwork that the Treatment Plan prescribes.
46

1 **III. REPORTING REQUIREMENTS AND RELATED REVIEWS**

2
3 E. Within 30 days after the FHWA has determined that all fieldwork required under
4 stipulation II has been completed, the FHWA will ensure preparation and concurrent
5 distribution to the other MOA parties, for review and comment, a brief letter report
6 that summarizes the field efforts and the preliminary findings that result from them.

7
8 F. Within 18 months after the FHWA has determined that all fieldwork required by
9 stipulation II.A. has been completed, the FHWA will ensure preparation, and
10 subsequent concurrent distribution to the other MOA parties, for review and
11 comment, a draft technical report that documents the results of implementing and
12 completing the Treatment Plan. The other MOA parties will be afforded 30 days
13 following receipt of the draft technical report to submit any written comments to the
14 FHWA. Failure of these parties to respond within this time frame shall not preclude
15 the FHWA from authorizing revisions to the draft technical report as the FHWA may
16 deem appropriate. The FHWA will provide the other MOA parties with written
17 documentation indicating whether and how the draft technical report will be modified
18 in accordance with any comments received from the other MOA parties. Unless any
19 MOA party objects to this documentation in writing to the FHWA within 30 days
20 following receipt, the FHWA may modify the draft technical report as the FHWA
21 may deem appropriate. Thereafter, the FHWA may issue the technical report in final
22 form and distribute this document in accordance with paragraph D. of this stipulation.

23
24 G. Copies of the final technical report documenting the results of Treatment Plan
25 implementation will be distributed by the FHWA to the other MOA parties, to the
26 Northwest Information Center of the California Historic Resources Information
27 System (CHRIS) Regional Information Center, and to Native American parties
28 subject to the terms of stipulation III.

29
30 **IV. NATIVE AMERICAN CONSULTATION**

31
32 The FHWA has consulted with the Federated Indians of Graton Rancheria regarding
33 the proposed Undertaking and its effect on historic properties, will continue to consult
34 with them, and will afford them, should they so desire, the opportunity to participate
35 in the implementation of this MOA and the Undertaking. Should the Tribe desire,
36 individually, to participate as an MOA party, as herein set forth, the FHWA will
37 make an effort to reach consensus with the Tribe regarding the manner in which that
38 Tribe may participate in the implementation of this MOA and the Undertaking, and
39 regarding any time frames or other matters that may govern the nature, scope, and
40 frequency of such participation.

41
42 **V. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

43
44 The MOA parties agree that human remains and related items discovered during the
45 implementation of the terms of this MOA and of the Undertaking will be treated in
46 accordance with the requirements of § 7050.5(b) of the California Health and Safety

1 Code. If, pursuant to § 7050.5(c) of the California Health and Safety Code, the
2 county coroner/medical examiner determines that the human remains are or may be of
3 Native American origin, then the discovery shall be treated in accordance with the
4 provisions of §§ 5097.98 (a) - (d) of the California Public Resources Code. The
5 FHWA will ensure that to the extent permitted by applicable law and regulation, the
6 views of the Most Likely Descendant(s) are taken into consideration when decisions
7 are made about the disposition of other Native American archaeological materials and
8 records.
9

10 VI. DISCOVERIES AND UNANTICIPATED EFFECTS

11
12 If the FHWA determines during the implementation of the Treatment Plan or after
13 construction of the Undertaking has commenced, that either the implementation of the
14 Treatment Plan or the Undertaking will affect a previously unidentified property that
15 may be eligible for the National Register, or affect a known historic property in an
16 unanticipated manner, the FHWA will address the discovery or unanticipated effect in
17 accordance with 36 CFR § 800.13(b)(3). The FHWA at its discretion may hereunder,
18 and pursuant to 36 CFR § 800.13(c), assume any discovered property to be eligible
19 for inclusion in the National Register.
20

21 VII. ADMINISTRATIVE PROVISIONS

22 A. STANDARDS

- 23
24
- 25 1. **Professional Qualifications.** All activities prescribed by stipulations I.B., II., III, V.,
26 and VI. of this MOA shall be carried out under the authority of the FHWA by or
27 under the direct supervision of a person or persons meeting at a minimum the
28 Secretary of Interior's *Professional Qualifications Standards* (48 FR 44738-39)
29 (PQS) in the appropriate disciplines. However, nothing in this stipulation may be
30 interpreted to preclude the FHWA or any agent or contractor thereof from using the
31 properly supervised services of persons who do not meet the PQS.
32
 - 33 2. **Documentation Standards.** Written documentation of activities prescribed by
34 stipulations I.B., II, III, V., and VI. of this MOA shall conform to *Secretary of the*
35 *Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48
36 FR 44716-44740) as well as to applicable standards and guidelines established by the
37 SHPO.
38
 - 39 3. **Curation and Curation Standards.** The FHWA shall ensure that, to the extent
40 permitted under §§ 5097.98, and 5097.991, of the California Public Resources Code
41 and based on landownership, the materials and records resulting from the activities
42 prescribed by this MOA are curated in accordance with 36 CFR Part 79.
43

44 B. CONFIDENTIALITY

45

- 1 1. The MOA parties acknowledge that the historic properties covered by this MOA are
2 subject to the provisions of § 304 of the National Historic Preservation Act of 1966
3 and § 6254.10 of the California Government Code (Public Records Act), relating to
4 the disclosure of archaeological site information and, having so acknowledged, will
5 ensure that all actions and documentation prescribed by this MOA are consistent with
6 § 304 of the National Historic Preservation Act of 1966 and § 6254.10 of the
7 California Government Code.
8

9 **C. RESOLVING OBJECTIONS**

- 10
11 1. Should any MOA party object to the manner in which the terms of this MOA are
12 implemented, to any action carried out or proposed with respect to implementation of
13 the MOA (other than the Undertaking itself), or to any documentation prepared in
14 accordance with and subject to the terms of this MOA, the FHWA shall immediately
15 notify the other MOA parties of the objection and consult with the objecting party,
16 and the other parties to this MOA for no more than 15 days to resolve the objection.
17 The FHWA shall reasonably determine when this consultation will commence and
18 may extend this consultation period. If the objection is resolved through such
19 consultation, the action in dispute may proceed in accordance with the terms of that
20 resolution. If, after initiating such consultation, the FHWA determines that the
21 objection cannot be resolved through consultation, then the FHWA shall forward all
22 documentation relevant to the objection to the ACHP, including the FHWA's
23 proposed response to the objection, with the expectation that the ACHP will within
24 thirty (30) days after receipt of such documentation:
25
26 a. advise the FHWA that the ACHP concurs in the FHWA's proposed response to
27 the objection, whereupon the FHWA will respond to the objection accordingly.
28 The objection shall thereby be resolved; or
29
30 b. provide the FHWA with recommendations, which the FHWA will take into
31 account in reaching a final decision regarding its response to the objection. The
32 objection shall thereby be resolved; or
33
34 c. notify the FHWA that the objection will be referred for comment pursuant to 36
35 CFR § 800.7(e), and proceed to refer the objection and comment. The FHWA
36 shall take the resulting comments into account in accordance with 36 CFR §
37 800.7(c)(4) and Section 110(l) of the NEPA. The objection shall thereby be
38 resolved.
39
40 2. Should the ACHP not exercise one of the foregoing options within 30 days after
41 receipt of all pertinent documentation, the FHWA may assume the ACHP's
42 concurrence in its proposed response to the objection and proceed to implement that
43 response. The objection shall thereby be resolved.
44
45 3. The FHWA shall take into account any ACHP recommendation or comment provided
46 in accordance with section C.1. of this stipulation with reference only to the subject of

1 the objection. The FHWA's responsibility to carry out all actions under this MOA
2 that are not the subjects of the objection will remain unchanged.
3

4 4. At any time during implementation of the measures stipulated in this MOA, should an
5 objection pertaining to such implementation be raised by a member of the public, the
6 FHWA shall notify the MOA parties in writing of the objection and take the objection
7 into consideration. The FHWA shall consult with the objecting party and if the
8 objecting party so requests, with the other MOA parties for no more than fifteen (15)
9 days. Within fifteen (15) days following closure of this consultation period, the
10 FHWA will render a decision regarding the objection and notify all consulting parties
11 hereunder of its decision in writing. The objection will thereby be resolved. In
12 reaching its decision, the FHWA will take into account any comments from the
13 consulting parties regarding the objection, including the objecting party. The
14 FHWA's decision regarding the resolution will be final.
15

16 5. The FHWA shall provide all MOA parties, the ACHP when the ACHP has issued
17 comments hereunder, and any parties that have objected pursuant to section C.4. of
18 this stipulation, with a copy of its final written decision regarding any objection
19 addressed pursuant to this stipulation.
20

21 6. The FHWA may authorize any action subject to objection under section C, this
22 stipulation to proceed after the objection has been resolved in accordance with the
23 terms of section C.
24

25 D. AMENDMENTS

26

27 1. Any MOA party may propose that this MOA be amended, whereupon the MOA
28 parties will consult for no more than 30 days to consider such amendment. The
29 FHWA may extend this consultation period. The amendment process shall comply
30 with 36 CFR § 800.6(c)(1) and 800.6(c)(7). This MOA may be amended only upon
31 the written agreement of the signatory parties. If it is not amended, this MOA may be
32 terminated by either signatory party in accordance with section E. of this stipulation.
33
34

35 E. TERMINATION

36

37 1. If this MOA is not amended as provided for in section D.1. of this stipulation, or if
38 either signatory party proposes termination of this MOA for other reasons, the
39 signatory party proposing termination shall, in writing, notify the other MOA parties
40 and the Federated Indians of Graton Rancheria, to explain the reasons for proposing
41 termination, and consult with the other MOA parties for at least 30 days to seek
42 alternatives to termination. Such consultation shall not be required if the FHWA
43 proposes termination because the Undertaking no longer meets the definition set forth
44 in 36 CFR § 800.16(y).
45

- 1 2. Should such consultation result in an agreement on an alternative to termination, then
2 the MOA parties shall proceed in accordance with the terms of that agreement.
3
4 3. Should such consultation fail, the signatory party proposing termination may
5 terminate this MOA by promptly notifying the other MOA parties. Termination
6 hereunder shall render this MOA without further force or effect.
7
8 4. If this MOA is terminated hereunder, and if the FHWA determines that the
9 Undertaking will nonetheless proceed, then the FHWA shall either consult in
10 accordance with 36 CFR § 800.6 to develop a new MOA or request the comments of
11 the ACHP pursuant to 36 CFR Part 800.
12

13 F. DURATION OF THE MOA

- 14
15 1. Unless terminated pursuant to section E. of this stipulation, or unless it is superseded
16 by an amended MOA, this MOA will be in effect following execution by the
17 signatory parties until the FHWA, in consultation with the other MOA parties,
18 determines that all of its stipulations have been satisfactorily fulfilled. This MOA will
19 terminate and have no further force or effect on the day that the FHWA notifies the
20 other MOA parties in writing of its determination that all stipulations of this MOA
21 have been satisfactorily fulfilled.
22
23 2. The terms of this MOA shall be satisfactorily fulfilled within 10 years following the
24 date of execution by the signatory parties. If the FHWA determines that this
25 requirement cannot be met, the MOA parties will consult to reconsider its terms.
26 Reconsideration may include continuation of the MOA as originally executed,
27 amendment, or termination. In the event of termination, the FHWA will comply with
28 section E.4. of this stipulation, if it determines that the Undertaking will proceed
29 notwithstanding termination of this MOA.
30
31 3. If the Undertaking has not been implemented within 10 years following execution of
32 this MOA by the signatory parties, this MOA shall automatically terminate and have
33 no further force or effect. In such event, the FHWA shall notify the other MOA
34 parties in writing and, if it chooses to continue with the Undertaking, shall reinstate
35 review of the Undertaking in accordance with 36 CFR Part 800.
36

37 G. EFFECTIVE DATE

38
39 This MOA will take effect on the date that it has been executed by the FHWA and the
40 SHPO.
41

42 EXECUTION of this MOA by the FHWA and the SHPO, its transmittal by the FHWA
43 to the ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent
44 implementation of its terms, shall evidence, pursuant to 36 CFR § 800.6(c), that this
45 MOA is an agreement with the ACHP for purposes of Section 110(l) of the NHPA, and
46 shall further evidence that the FHWA has afforded the ACHP an opportunity to comment

1 on the Undertaking and its effect on historic properties, and that the FHWA has taken into
2 account the effect of the Undertaking on historic properties.
3

1 **SIGNATORY PARTIES:**

2

3 **Federal Highway Administration**

4

5 By Kenneth M. Fong 9/11/08
Date

6 Gene K. Fong
7 Division Administrator
8 California Division

9

10 **California State Historic Preservation Officer**

11

12
13 By Milford Wayne Donaldson 11 SEP 2008
Date

14 Milford Wayne Donaldson, FAIA
15 State Historic Preservation Officer

16

17

18

19

20 **CONCURRING SIGNATORY:**

21

22 **California Department of Transportation**

23

24
25 By Bijan Sartipi 9-16-08
Date

26 Bijan Sartipi, Director
27 District 4, Oakland

28

29 **Federated Indians of Graton Rancheria**

30

31
32 By Greg Sarris October 24, 2008
Date

33 Greg Sarris,
34 Tribal Chairperson

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

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Received

JUN 17 2008

FHWA

June 17, 2008

Gene K. Fong
Federal Highways Administration
California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

RE: HAD-CA File # Marin-Sonoma Narrows Document # P58408

Dear Mr. Fong:

Thank you for requesting my comments on the above cited document. My staff has reviewed the documentation you provided and I would like to offer the following comments.

I do not have specific comments on the contents of draft historic properties treatment plan as currently presented. I would make the following suggestions:

When finalized, the maps delineating the area of potential effect and area of direct impact should be incorporated into the document.

A plan for avoiding damage to historic properties through the establishment of Environmentally Sensitive Areas should also be included in the treatment plan.

By incorporating the above information into the historic properties treatment plan, it will make the development of a Memorandum of Agreement (MOA) much easier and will allow amendments to any aspect of the historic properties treatment plan without amendment to the MOA.

The treatment plan demonstrates that there is a high likelihood of the undertaking disturbing Native American burials. Procedures are provided for treatment of burials during the archaeological excavation and post data recovery/preconstruction. The document indicates consultation has taken place with Native American tribes. I encourage the procedures for the treatment of Native American burials, human remains and associated grave goods be formally agreed upon before finalization of the historic property treatment plan.

Once again, thank you for requesting my comments. If my staff can be of further assistance, please contact Dwight Dutschke or Susan Stratton at 916-653-6624.

Sincerely,

A handwritten signature in black ink that reads "Stephen D. Milford for".

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

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17 November 2006

In Reply Refer To
FHWA060328A

Jennifer Darcangelo, Chief
Office of Cultural Resource Studies
Environmental Division
California Department of Transportation, District 4
P.O. Box 23660
Oakland, California 94623-0660

RE: DETERMINATIONS OF ELIGIBILITY FOR THE PROPOSED MARIN-SONOMA NARROWS PROJECT, ON U.S. HIGHWAY 101 IN MARIN AND SONOMA COUNTIES, CALIFORNIA; EA 264000 [SECTION 106 CONSULTATION (RND.02) ON THE **MARIN-SONOMA NARROWS PROJECT ON U.S. HIGHWAY 101, MARIN AND SONOMA COUNTIES, CALIFORNIA**]

Dear Ms. Darcangelo,

This letter addresses the California Department of Transportation's (Caltrans) response, on behalf of the Federal Highway Administration (FHWA), to my 22 April 2006 comment on Caltrans' efforts to date to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as amended. Caltrans' response and my comment on it here are made pursuant to the 1 January 2004 *Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as It Pertains to the Administration of the Federal-aid Highway Program in California* (PA).

Caltrans' letter of 18 August 2006 largely defers comment on my 22 April discussion of the adequacy of the agency's efforts to identify historic properties, and primarily treats the regulatory disposition of a number of prehistoric archaeological sites in the area of potential effects for the subject undertaking.

Caltrans proposes in the subject letter to lump archaeological sites CA-MRN-196 and CA-MRN-197 together, and determines that the composite site, which is to be referred to as CA-MRN-196, is eligible for inclusion in the National Register of Historic Places (National Register) under Criterion D. Caltrans acknowledges that, due to a lack of access to portions of the composite site, the agency cannot definitively ascertain the true extent of the historic property. Caltrans further proposes to complete the identification and evaluation of the composite site as R.O.W. acquisition for the undertaking progresses.

On the basis of the information in the March 2006 *Historic Property Survey Report for the Marin-Sonoma Narrows Project on US Highway 101 from the Vicinity of Novato, Marin County to the vicinity of Petaluma, Sonoma County*, I concur that

- 1) the most appropriate manner to presently manage CA-MRN-196 and CA-MRN-197 is to lump them together into a single archaeological resource that will hereafter be referred to as CA-MRN-196, and
- 2) the new, more inclusive **CA-MRN-196** is eligible for inclusion in the National Register under Criterion D.

I agree to Caltrans' strategy to complete the identification and evaluation of the new CA-MRN-196 only in so far as Caltrans can demonstrate that such efforts are in direct support of alternatives to the undertaking that are under consideration at the time the agency intends to conduct further identification and evaluation fieldwork. I hope that this caveat will serve to clarify a persistent misinterpretation of an early on-site discussion about this undertaking that took place in August of 2002. My concern about the adequacy of Caltrans' level of effort to identify and evaluate historic properties relates to the degree to which such efforts support the active consideration of undertaking alternatives rather than how invasive such efforts may be.

Caltrans also proposes in its 18 August letter to lump prehistoric archaeological sites CA-MRN-194, CA-MRN-195, CA-MRN-507, and CA-MRN-526 into a composite property which is to be referred to as the Olompali Complex. Caltrans proposes, similar to the scenario for CA-MRN-196 above, to complete the identification and evaluation of the composite site as R.O.W. acquisition for the undertaking progresses. I do not object to the proposed strategy with the caveats that CA-MRN-193 be included in the Olompali Complex due to its spatial proximity to the balance of the complex, and that Caltrans ultimately declare which trinomial will represent the complex.

Although the FHWA has not formally notified me of its finding of effect for the undertaking, I understand, on the basis of a 5 October 2006 telephone conversation between yourself and Mike McGuirt of my staff, that Caltrans anticipates that the FHWA will find the undertaking to adversely affect historic properties, and seek to develop a memorandum of agreement (MOA) to resolve those effects. Caltrans apparently envisions the MOA stipulating the completion of a deferred final phase of identification and evaluation for the archaeological sites above. I would like to offer my advance support for this strategy, and add that I would be glad to conclude our discussion of my comments of 22 April with Caltrans and the FHWA as an aspect of our development of the subject MOA.

Please direct any questions or concerns that you may have to Project Review Unit archaeologist Mike McGuirt at 916.653.8920 or at mmcgu@parks.ca.gov.

Sincerely,

Susan K Stratton for

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

MWD:MDM:mdm

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22 April 2006

In Reply Refer To
FHWA060328A

Jennifer Darcangelo
Branch Chief, Archaeology East
Office of Cultural Resource Studies
California Department of Transportation, District 4
P.O. Box 23660
Oakland, California 94623-0660

RE: DETERMINATIONS OF ELIGIBILITY FOR THE PROPOSED MARIN-SONOMA NARROWS PROJECT, ON U.S. HIGHWAY 101 IN MARIN AND SONOMA COUNTIES, CALIFORNIA; EA 264000 [SECTION 106 CONSULTATION ON THE **MARIN-SONOMA NARROWS PROJECT** ON U.S. HIGHWAY 101, MARIN AND SONOMA COUNTIES, CALIFORNIA]

Dear Ms. Darcangelo,

This letter is a response to the California Department of Transportation's (Caltrans) submission, on behalf of the Federal Highway Administration, of the March 2006 *Historic Property Survey Report for the Marin-Sonoma Narrows Project on US Highway 101 from the Vicinity of Novato, Marin County to the vicinity of Petaluma, Sonoma County* (HPSR). Caltrans' submission and my comment on it here are made pursuant to the 1 January 2004 *Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as It Pertains to the Administration of the Federal-aid Highway Program in California* (PA).

Caltrans' letter of 23 March 2006 requests that I concur, pursuant to stipulation VIII.C.5 of the PA, with its determinations on the National Register of Historic Places (National Register) eligibility of a number of properties in the subject undertaking's area of potential effects (APE).

On the basis of my review of the HPSR, I concur that

711 Alice Street, Novato
707 Alice Street, Novato
9501 Redwood Highway, Novato
9543 Redwood Highway, Novato
155 San Antonio Road, Petaluma
156 San Antonio Road, Petaluma
5495 Redwood Highway, Petaluma
4796 Redwood Highway, Petaluma
4775 Redwood Highway, Petaluma
4410 Kastania Road, Petaluma
4408 Kastania Road, Petaluma
4300 Kastania Road, Petaluma
2760-62 S. Petaluma Boulevard, Petaluma
Bridges 20-0154L and R, U.S. Highway 101, Petaluma
1178 Lindberg Lane, Petaluma
8 Northwest Pacific Railroad segments (see p. 3 of the November 2004 DPR 523 and attachment 1 to the HPSR)
CA-MRN-192

are *not* eligible for inclusion in the National Register.

I concur further that the

Freeman-Parker residence, 4555 Redwood Highway, Petaluma

is eligible for inclusion in the National Register under Criterion C, at the local level of significance, as a rare example of a mid-nineteenth century vernacular residence. I understand the property's period of significance to be the 1850s.

I concur that archaeological site

CA-MRN-327

is eligible for inclusion in the National Register under Criterion D for its potential to yield information important in the local prehistory of the Late period.

I am presently unable to concur with Caltrans' determinations on the National Register eligibility of a number of other archaeological sites that appear to be in and along the fringe of the floodplains of San Antonio Creek and the Petaluma River. The subject sites appear to be in relatively complex depositional environments, and the HPSR and the attachments to that document do not evidence a knowledge of the sites or their physical contexts sufficient to enable me to concur in Caltrans' determinations.

The complex of archaeological deposits to the south of San Antonio Creek do not appear to be very well understood at the present time. The central to southern portions of archaeological site CA-MRN-197, archaeological deposits identified in auger test nos. 62 and 63 (attachment 5 to the HPSR), and archaeological site CA-MRN-196 may all represent a single archaeological property. I do not believe that it would be appropriate for me to comment on the National Register eligibility of the various components of what may be a single archaeological property when the character of the associations among those components remain so incompletely known.

Similar to the deposits along San Antonio Creek, the complex of archaeological deposits along and to the south of Worm Farm Creek on what appears to be the floodplain of the Petaluma River also do not appear to be well understood at the present time. I am not confident, on the basis of the documentation that I presently have in hand, that the respective extents of archaeological sites CA-MRN-193-195, -507, and -526 have been investigated enough to reliably distinguish each site as an individual property. As appears to be the case with CA-MRN-196 and -197, it is possible that the Worm Farm Creek complex of deposits may represent significantly fewer archaeological sites than presently portrayed. The evaluations of the individual sites are not presently in a condition that would enable me to provide comment on determinations of their National Register eligibility.

The degree of effort that would be appropriate to further refine Caltran's understanding of the above archaeological deposits would depend on the ultimate scope of the undertaking's potential effects on the individual deposits. As various alternatives for the undertaking appear to be under active consideration as of your 23 March letter, the consideration of the location of the above deposits in the alternative selection process may help to reduce the need for such further work.

As your 23 March letter states your anticipated finding that the implementation of the undertaking will adversely affect historic properties, I provide comment here on Caltrans' efforts to comply with the other steps in the Section 106 process. On the basis of my review of the HPSR, I believe that Caltrans' determination of the area of potential effects (APE) for the undertaking, pursuant to stipulation VIII.A of the PA and in accordance with attachment 3 to that document, is appropriate as the undertaking is presently defined.

I am presently not clear that Caltrans' efforts to identify historic properties, pursuant to stipulation VIII.B of the PA, are yet complete. The methods that Caltrans used to inventory the historic properties in the APE do not appear to be consistent with my routine guidance. As one example, the pedestrian survey of the surface of the APE was done using 30 m intervals over what attachment 5 to the

HPSR describes as often heavy vegetation. Caltrans' efforts to take into consideration the apparent fact that the surface of the mineral soil was often not visible were limited to the periodic scraping of patches of the ground surface and the examination of cut banks, equipment scrapes, and rodent borrow tailings, where these happened to occur. I would not ordinarily recommend such a methodology to a federal agency, because it lacks the systematic rigor to provide data that would reliably represent the population of historic properties in an undertaking's APE. Another example of where Caltrans' methods do not appear to be consistent with my usual guidance relates to how the agency sought to consider the effects of the subject undertaking on archaeological sites that may be buried beneath the surface of the APE. Despite having done a preliminary geoarchaeological analysis of the corridor for the undertaking (appendix A of attachment 5 to the HPSR), Caltrans does not appear to have used that information or consulted further with a professional geoarchaeologist to design a methodology or sample structure to systematically investigate the subsurface of the subject undertaking's APE. The methods that Caltrans used to observe the subsurface deposits in the APE are relatively limited in scope, and the sample structure appears to have been largely subjective in character.

In order that Caltrans and I may consult on and develop a narrow set of objectives to conclude our discussion of the agency's efforts to identify historic properties in the subject undertaking's APE, I would appreciate having some additional layers of information for Caltrans' APE map in attachment 3 to the HPSR. I would appreciate having layers that depict

1. where local vegetation cover was particularly dense and the surface of the mineral soil was not visible,
2. the portions of the APE where landowners denied Caltrans access,
3. the portions of the APE where the implementation of the undertaking is likely to disturb the ground,
4. the "geological-landform deposits" of table 2 in appendix A of attachment 5 to the HPSR, and
5. the locations of the auger tests.

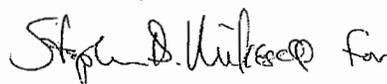
To facilitate our discussion of the above information, I would further appreciate it if Caltrans would prepare statements

1. on the portions of the subject undertaking's APE where the extant pedestrian survey data may not well represent the actual frequency of archaeological deposits and on the percentage of the APE those portions represent,
2. on the portions of the APE where Caltrans will ultimately gain access through property acquisition,
3. on the portions of the APE where ground disturbance is likely to occur and on the percentage of those portions that were subject to augering, and
4. on whether and how Caltrans proposes to take into account the inventory gaps that 1-3 above would ostensibly document.

When you feel that it is appropriate, I would be glad to meet with you to discuss a strategy to conclude our consultations on the identification and evaluation of historic properties in the subject undertakings' APE.

Please direct any questions or concerns that you may have to Project Review Unit archaeologist Mike McGuirt at 916.653.8920 or at mmcgu@parks.ca.gov.

Sincerely,



Milford Wayne Donaldson, FAIA

State Historic Preservation Officer

MWD:mdm