

**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL TRANSIT ADMINISTRATION AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE DESIGN AND CONSTRUCTION OF THE SAN FRANCISCO BAY
AREA RAPID TRANSIT DISTRICT'S WARM SPRINGS EXTENSION,
ALAMEDA COUNTY, CALIFORNIA**

WHEREAS, the U.S. Department of Transportation, Federal Transit Administration (FTA) may provide funds for the design and construction of the San Francisco Bay Area Rapid Transit District's (BART) Warm Springs Extension (Undertaking), a proposed 5.4-mile addition to BART's present system to be built from the Fremont Station south to a new station in the Warm Springs district of the City of Fremont in Alameda County, California and illustrated in attachment B to this memorandum of agreement (MOA); and

WHEREAS, FTA finds that the Undertaking will adversely affect archaeological site CA-ALA-343 and may adversely affect the Ford House (Historic Resource Inventory No. 138623) and the Gallegos Winery ruin, properties that FTA has determined, in consultation with the California State Historic Preservation Officer (SHPO), to be eligible for inclusion in the National Register of Historic Places (National Register) and, therefore, historic properties as defined at 36 CFR § 800.16(l)(1); and

WHEREAS, FTA has consulted with the SHPO in accordance with 36 CFR Part 800, the regulation that implements Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), as amended (Act), and has notified the Advisory Council on Historic Preservation (Council) of the adverse effect finding pursuant to 36 CFR § 800.6(a)(1); and

WHEREAS, FTA, after thoroughly considering alternatives to the Undertaking, has determined that the design constraints on the Undertaking preclude the possibility of avoiding adverse effects to archaeological site CA-ALA-343 during the Undertaking's implementation, has further determined that it will resolve, to the extent possible, the adverse effects of the Undertaking on CA-ALA-343, and, should the implementation of the Undertaking ultimately include the construction of Irvington Station, will also resolve, to the extent possible, the adverse effects on the Ford House and the Gallegos Winery ruin through the execution and implementation of this MOA; and

WHEREAS, BART has participated in this consultation and FTA has invited the agency, pursuant to 36 CFR § 800.6(c)(2), to become a signatory to the MOA; and

WHEREAS, BART, on behalf of FTA, has been in consultation with Andrew Galvan, of The Ohlone Indian Tribe, Ramona Garabay, representative for the Trina Marine Ruano Family, and Anne Marie Sayers of the Indian Canyon Mutsun Band of Coastanoan, and continues to consult with these parties regarding the Undertaking and its adverse effect on CA-ALA-343, and FTA has invited these parties, pursuant to 36 CFR § 800.6(c)(3), to concur in this MOA;

NOW, THEREFORE, FTA and the SHPO agree that, upon FTA's decision to assist with the implementation of the Undertaking, FTA shall ensure that the Undertaking is implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

FTA shall ensure that the following measures are carried out:

I. AREA OF POTENTIAL EFFECTS

- A.** The present area of potential effects (APE) for the Undertaking is depicted in attachment B, figures 1-3. Attachment B also describes the area of direct impact (ADI) for the Undertaking alternatives presently under consideration.
- B.** If modifications to the Undertaking, subsequent to the execution of this MOA, necessitate the revision of either the APE or the ADI, BART, on behalf of FTA, shall consult with the SHPO on the adequacy of the subject revisions. If BART and the SHPO cannot reach agreement on the adequacy of the revisions, then FTA and the SHPO shall resolve the dispute in accordance with section C of stipulation IV, below. If BART and the SHPO reach mutual agreement on the adequacy of the proposed revisions, then BART shall submit a final map of the revisions no later than 30 days following such agreement. Any additions to the APE that result from the application of the process in this stipulation shall be subject to the phased historic property identification process in the final version of the *Historic Properties Treatment Plan for BART Warm Springs Extension, Alameda County, California* (HPTP), which will be attachment A to this MOA and is described further in stipulation II below.

II. TREATMENT OF HISTORIC PROPERTIES

- A.** BART, on behalf of FTA, shall prepare and implement a final version of the HPTP that concludes the phases of historic property identification that BART, on behalf of FTA, chose to defer until after FTA's approval of the Undertaking, provides for historic property identification in any areas added to the APE as a result of the process in section B of stipulation I, takes into account the adverse effect of the Undertaking on CA-ALA-343 and the potential adverse effect of the Undertaking on the Ford House and the Gallegos Winery ruin, and addresses any unanticipated effects or discoveries that may result from the Undertaking's implementation. The final version of the HPTP will be the successor to the March 2005 draft of the plan, will reflect the input of the parties to this MOA, will be made final through consensus among the signatories to this MOA prior to the onset of any activity related to the Undertaking's implementation, will be appended to this MOA as attachment A, and will begin to be implemented prior

to construction-related ground disturbances related to the Undertaking's implementation.

- B. 1.** FTA has submitted a March 2005 draft of the HPTP to the SHPO. Recipients of the draft HPTP included the SHPO, FTA, BART, Andrew Galvan, of The Ohlone Indian Tribe, Ramona Garabay, representative for the Trina Marine Ruano Family, and Anne Marie Sayers of the Indian Canyon Mutsun Band of Coastanoan. These parties shall have 30 days from the execution of this MOA to comment. Failure to respond within this time frame shall not preclude FTA from finalizing the HPTP. Before it finalizes the HPTP, FTA will provide the SHPO and the other MOA parties with documentation indicating whether and how any comments from these parties will be incorporated into the final HPTP. Unless the SHPO or the other MOA parties object to this documentation within 15 days following receipt, FTA may finalize the HPTP as it deems appropriate, distribute copies to the other MOA parties, and thereafter proceed to implement the final HPTP.
- 2.** Any party to this MOA may propose an amendment to the HPTP at any time. Such amendment will not require that the MOA be amended. Disputes regarding amendments proposed hereunder shall be addressed in accordance with section C of stipulation IV.
- C.** The final version of the HPTP will, at a minimum, address the following subject areas:
- 1. Deferred Historic Property Identification**
- a. The HPTP will describe the methods that will be employed to complete the final phases of historic property identification. More specifically, the HPTP will build on the identification efforts completed to date (see chapter 4 of the HPTP) and will specify where and under what circumstances further efforts to identify significant archaeological deposits will take place within the ADI. The HPTP will include a focused ADI, which identifies where construction related ground disturbances are planned, and specify additional archaeological testing within the ADI for the various project segments as follows:
- 1.** Project Segment 1, North End of APE to Northern Subway Portal: Archaeological testing will occur in this segment, which encompasses the northern terminus of the proposed undertaking and includes the known location of CA-ALA-343. The extensive construction and ground disturbances proposed in this area make it highly probable that buried resources would be encountered during the implementation of this undertaking. Archaeological testing will be conducted to precisely determine the boundaries of and inform subsequent efforts to resolve

adverse effects to CA-ALA-343 described under Stipulation II.C.2.a.

2. Project Segment 2, Subway Tunnel from the North Subway Portal to the South Subway Portal: Archaeological testing will be conducted in this segment which was likely a shallow basin and subject to occasional flooding throughout the mid-Holocene, making it less desirable for human occupation in contrast to surrounding areas. Unrecorded archaeological deposits may be present in this segment, however the age of the landform in the immediate vicinity indicates that sites would be from the late Holocene and located at a relatively shallow depth.
3. Project Segment 3, South Subway Portal to Paseo Padre Parkway: Archaeological testing will occur in Segment 3. This segment is largely comprised of younger alluvium and Pleistocene and undifferentiated alluvial deposits. It is possible that any grading or utility trenching into the undifferentiated alluvial deposits may encounter unrecorded archaeological deposits. This possibility is highest to the south away from the natural basin now occupied by Lake Elizabeth. However archaeological sites are not expected to occur in the deeper and older Pleistocene deposits in this location.
4. Project Segment 4, Paseo Padre Parkway to Washington Boulevard and Optional Irvington Station: Archaeological testing shall occur at the location of the Optional Irvington Station, if it is included in this Undertaking. No archaeological testing is planned for the remainder of Segment 4, because the potential for encountering buried archaeological material is low. Construction is primarily limited to modern fill or non-sensitive Pleistocene landform deposits.
5. Project Segment 5, Optional Irvington Station to South Grimmer Boulevard Overpass: No archaeological testing is planned for the remainder of this area because the potential for encountering buried archaeological material is low. Construction is primarily at grade or limited to modern fill or non-sensitive Pleistocene landform deposits.
6. Project Segment 6, South Grimmer Boulevard to South End of Alignment: Archaeological testing shall occur at the location of the Warm Springs Station and include any utility excavations. No archaeological testing is planned for remainder of this area because the potential for encountering buried archaeological

material is low. Construction is primarily limited to at-grade tracks or work in modern fill or non-sensitive Pleistocene landform deposits.

b. If previously unidentified, significant archaeological deposits are found during exploratory archaeological testing, BART, on behalf of FTA, will resolve any adverse effects by recovering a sample of the significant archaeological deposits that the implementation of the Undertaking would destroy. The HPTP will design the recovery of such data to address research themes of interest to the archaeological research community, Native Americans, and the public.

c. No ground-disturbing activity related to the Undertaking's implementation shall occur in any project segment or any portion of a project segment where the deferred historic property identification work above is to occur until the MOA parties have had the opportunity to review and comment on the letter report set out in stipulation II.C.5.a.

2. Resolving Adverse Effects on CA-ALA-343

a. FTA shall take into account the Undertaking's adverse effect on archaeological site CA-ALA-343 by ensuring that BART implements the data recovery plan for the site that is a part of the HPTP. The final version of the data recovery plan will, at a minimum:

1. state FTA's intent to recover a reasonable sample of the intact archaeological deposits of CA-ALA-343 that the agency determines, through the process set out in stipulation II.C.1.a.1 above, that the implementation of the Undertaking will destroy;
2. specify the research issues/questions to be addressed through the recovery of data, and provide for a process whereby the research issues/questions will be refined to reflect the information that FTA gathers as a result of the investigation set out in stipulation II.C.1.a.1 above;
3. explain why it is in the public interest to address those research issues;
4. explain how data from the historic property will address those research issues/questions;
5. specify the methods to be used in fieldwork and analysis, and explain how these methods are relevant to the research issues/questions;

6. specify the methods to be used in data management and data dissemination;
7. indicate how recovered materials and records will be disposed, taking into account the expressed wishes of the consulting Native Americans;
8. include a schedule for providing the consulting Native Americans with periodic updates on implementation of the data recovery plan;
9. include a curation agreement that ensures that all materials (other than Native American human remains and grave-associated materials) and records are maintained in accordance with 36 CFR 79. Materials recovered from privately owned lands, other than Native American human remains and grave-associated materials that are to be returned to their owners, will be maintained in accordance with 36 CFR 79 until their analysis is completed;
10. specify the manner in which human remains and grave-associated artifacts recovered during data recovery will be treated according to applicable laws and regulations, and in consultation with the wishes of the consulting Native Americans; and
11. specify that no ground-disturbing activity related to the Undertaking's implementation shall occur inside of or adjacent to CA-ALA-343 until the field portion of the data recovery plan for the site has been entirely executed.

b. BART, on behalf of FTA, will consult with tribes and other interested Native Americans during the development of the HPTP to solicit their views on the contents of the HPTP, the public interpretation of the archaeological record, treatment of burials, and the scope of data recovery.

3. Resolving Adverse Effects on Built Environment Properties

In the event that the Optional Irvington Station is included in this Undertaking, BART, on behalf of FTA, shall insure that the following measures (Stipulations II.C.3. a and b) are completed to resolve adverse effects on the Gallegos Winery and the Ford House:

a. Gallegos Winery

BART, on behalf of FTA, will stabilize and preserve in place, in accordance with the Secretary of the Interior's Standards, the structural remains of the winery and retain as many of the historic palm trees as feasible. The measure of feasibility will be the degree to which a palm tree or trees compromises the functional design of the optional Irvington Station. Specific plans for the protection and preservation of the winery will be described in detail in the HPTP. BART, on behalf of FTA, will make every prudent and feasible effort to incorporate the existing landscape features, including the aforementioned palm trees, into the proposed optional Irvington Station walkway and parking lot. An appropriate barrier or fencing will be placed between the proposed walkway/parking lot and the structural remains so that the site is protected, yet visible to the public. At the conclusion of the undertaking, BART, on behalf of FTA, will also display an interpretive plaque or sign near the winery ruin explaining the history and significance of the site, and why it is in the public interest to preserve and interpret the ruin.

b. The Ford House

BART, on behalf of FTA, will hire a qualified cultural resources management specialist to prepare photography and construction drawings of the Ford House. The photographs will be large-format (4"x5" or larger negative size) black and white style, and will be processed for archival permanence in accordance with the Historic American Building Survey (HABS). Images of the building shall include contextual views of the building in its setting, elevation views, and details of character-defining features.

BART, on behalf of FTA, will also ensure the completion of a written historical and descriptive report for the Ford House. This report will provide a physical description and historical context for the building and discuss its significance under applicable NRHP criteria. The report will be prepared in accordance with the NPS *HABS/HAER Guidelines: HABS Historical Reports, October 2000*.

Copies of the documentation prescribed in this stipulation shall upon completion be retained by BART and also be provided to local historical societies (e.g. Alameda County) and to the Northwest Information Center of the California Historical Resources Information System at Sonoma State University, Rohnert Park and to other interested parties upon request.

BART, on behalf of FTA, will rehabilitate the Ford House, and will explore adaptive reuse options for the building if construction of the optional Irvington Station is included in this undertaking. All plans and specification for the undertaking shall be developed and executed in accordance to guidelines established in the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing (1995). BART, on behalf of FTA, shall submit to SHPO for review and comment all plans and specifications that are prepared for this undertaking. BART shall also ensure that plans and specifications are modified in accordance with SHPO comments, if any.

4. Construction Monitoring, Unanticipated Effects and Discovery

A. Extent of Archaeological Monitoring and the Role of the Archaeological Monitor

BART, on behalf of FTA, shall ensure that archaeological monitoring will occur during the implementation of the Undertaking so that any historic properties found in the APE, subsequent to the implementation of stipulations II.C.1 and 2 above, will receive due consideration.

1. Procedures for monitoring excavation and sediment removal in the APE will be as follows:

- a. Excavation and sediment removal will be monitored at National Register eligible archaeological sites following completion of investigations conducted as part of the phased identification efforts described in stipulation II.C.1 above or as part of data recovery efforts described in stipulation II.C.2, and in areas with high sensitivity for buried sites, as identified in Stipulation II.C.4.A.2.
- b. Archaeological monitors will be selected by and report directly to the BART Project Manager (PM). Archaeological monitors will work in close coordination with BART's Construction Management Oversight (CMO) consultants, who will have day-to-day oversight responsibility for the contractor's activities in the field. At no time will the archaeological monitors be responsible to or come under the authority of the contractor in the performance of their duties. Archaeological monitors shall have the authority, through the PM and/or CMO, to stop or re-direct project activities to ensure protection of resources and compliance with all environmental conditions of the project.
- c. Primary lines of communication will be between the archaeological monitor(s) and the PM. The PM will be responsible for environmental

compliance and reporting. The PM will take the lead in addressing any non-compliance issues. If there is a non-compliance issue, the PM will notify the appropriate agencies.

- d. Archaeological Monitors will be kept informed of construction activities by the PM and CMO. Archaeological Monitors will participate in daily briefings of activities and be in constant communication with the PM and CMO by radio or cell phone. Archaeological Monitors will file a daily written log.
- e. Archaeological Monitors will be present in each location where ground disturbance is to occur in an area of "high sensitivity" regardless of the number of such disturbances occurring at any one time.

2. Ground disturbing activities in the following portions of the APE would require an archaeological monitor:

- a. Project Segment 1, North End of APE to Northern Subway Portal: Archaeological Monitoring shall occur throughout the entire APE, in the vicinity of CA-ALA-343, from Walnut Avenue to Fremont Central Park.
- b. Project Segment 2, Subway Tunnel from North Subway Portal to the South Subway Portal: Archaeological Monitoring shall occur where cut and cover excavations are required to construct the proposed sub-way tunnel.
- c. Project Segment 3, South Subway Portal to Paseo Padre Parkway: Archaeological Monitoring shall occur at the southern subway portal and at locations where utility trenching is planned to connect to the traction power sub-station approximately 700 feet north of Paseo Padre Parkway.
- d. Project Segment 4, Paseo Padre Parkway to Washington Boulevard and Optional Irvington Station: Archaeological Monitoring shall occur during construction excavation for the optional Irvington Station if it is included in this Undertaking.
- e. Project Segment 5, Irvington Station to Grimmer Boulevard Overpass: Archaeological Monitoring is not planned for this segment because the majority of project construction will occur at grade and the archaeological sensitivity in this area is moderate to low.
- f. Project Segment 6, South Grimmer Boulevard to end of Alignment: Archaeological Monitoring will occur in this segment during excavation for the planned Warm Springs Station including any utility trenching.

B. Archaeological Discovery Field Protocol

1. Monitors would carefully inspect spoils and vertical cuts for archaeological evidence, taking safety conditions into account. If potentially significant resources are encountered, the archaeological monitor may temporarily halt or redirect construction activities surrounding the discovered resources that require further investigation to determine significance. The newly discovered resource may also be fenced off to protect it from vandalism and inadvertent intrusions by machinery.

2. Testing and evaluation of the discovered resource would be implemented following procedures described in the HPTP. The manual excavation methods employed would depend on several factors, including site structure and the type of materials present. If historic properties are identified during monitoring that are in danger of being disturbed by construction, and the SHPO concurs in the National Register status of such properties, then it would be necessary to recover data from those properties, following procedures described in the HPTP. Such procedures shall include the recovery of a sample of the significant archaeological deposits that the implementation of the Undertaking would destroy. The HPTP will design the recovery of such data to address research themes of interest to the archaeological research community, Native Americans, and the public. However, if identified properties were determined not to be eligible for the National Register based, in part, on criteria of integrity identified in the HPTP, and the SHPO concurs, subsurface investigation would cease at the testing and evaluation phase. FTA will either determine whether found properties are eligible for inclusion in the National Register and request the concurrence of the SHPO, or state that FTA is assuming the National Register eligibility of such properties. The SHPO shall respond to any such request no later than 48 hours from its receipt. If the SHPO fails to respond in this timeframe, FTA may assume that the SHPO concurs with its determinations, for the purpose of this Undertaking.

3. Construction activities must avoid any archaeological discovery until the archaeological monitor indicates in writing to the Resident Engineer that the site area avoidance fencing can be removed and construction can resume in the area. This determination will be made in accordance with stipulation II.C.4.B.2.

4. Treatment of Human Remains

The MOA parties understand and acknowledge that human remains, perhaps a very large number of such remains, are likely to be discovered during the course of the Undertaking's implementation. The MOA parties agree, further, that any human remains and funerary objects discovered

during the implementation of the terms of this MOA and during the implementation of the Undertaking itself will be treated by BART, on behalf of FTA, in accordance with the requirements of § 7050.5(b) of the California Health and Safety Code. If, pursuant to § 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of §§ 5097.98 (a) - (d) of the California Public Resources Code. FTA will ensure that to the extent permitted by applicable law and regulation, the views of the Most Likely Descendant(s) are taken into consideration when FTA makes decisions about the disposition of Native American human remains and funerary objects, and will further ensure the respectful treatment of each such set of remains and funerary objects.

5. Reporting

a. Within 30 days after BART has determined that all fieldwork required under stipulation II.C.1.a has been completed, BART, on behalf of FTA, will ensure preparation and concurrent distribution to the other MOA parties, for review and comment, of a brief letter report that summarizes the rationale of the field efforts and the preliminary findings that are their result. The letter report will either determine whether found properties are eligible for inclusion in the National Register and request the concurrence of the SHPO, or state that FTA is assuming the National Register eligibility of such properties. The SHPO shall respond to any such request no later than 15 days from its receipt. If the SHPO fails to respond in this timeframe, FTA may assume that the SHPO concurs with its determinations, for the purpose of this Undertaking.

b. Within 24 months after BART has determined that all fieldwork required by stipulation II.C has been completed, BART, on behalf of FTA, will ensure preparation, and subsequent concurrent distribution to the other MOA parties, for review and comment, of a draft technical report that documents the results of implementing and completing the HPTP. The other MOA parties will be afforded 30 days following receipt of the draft technical report to submit any written comments to BART. Failure of these parties to respond within this time frame shall not preclude BART from authorizing revisions to the draft technical report, as BART may deem appropriate. BART will provide the other MOA parties with written documentation indicating whether and how the draft technical report will be modified in accordance with any comments received from the other MOA parties. Unless any MOA party objects to this documentation in writing to BART within 30 days following receipt, BART may modify the draft technical report, as BART may deem appropriate. Thereafter, BART may issue the technical report, on behalf of FTA, in final form and distribute this document in accordance with paragraph c. of this stipulation.

c. Copies of the final technical report documenting the results of HPTP implementation will be distributed by BART to the other MOA parties, to the Northwest Information Center of the California Historic Resources Information System (CHRIS) Regional Information Center, and to Native American parties subject to the terms of stipulation III.

6. Public Outreach

a. Public Interpretation. If the implementation of the undertaking results in the recovery of data that can address research themes of interest to the archaeological research community, Native Americans, and the public, findings from the project will be interpreted through public exhibits and materials, which would be prepared by BART under the direction of FTA. BART would propose particular interpretive products to all parties of the MOA in a letter. Consideration would be given in any public interpretation for the need to maintain confidentiality of location, character, and ownership pursuant to Section 304 of the NHPA and 36 CFR 800.11(c).

b. Professional Publications. BART will provide for the dissemination of the results of the HPTP's implementation among cultural resources professionals. BART shall encourage and support the preparation of publications or presentations for professional and popular journals discussing the findings gained from the research conducted for this project.

c. Document Review and Dissemination. The Popular Report, and the Proposal for Public Interpretive Exhibits and Materials shall be completed within 2 years of completion of the construction monitoring. BART, on behalf of FTA, shall distribute a draft version of these documents to all MOA parties for their review and comment. The MOA parties would have 30 days in which to review the documents.

d. BART would modify the documents in accordance with timely comments received from the reviewing parties. Failure of any party to comment within the specified time frame shall not preclude BART, on behalf of FTA, from completing or issuing the documents in final form.

III. NATIVE AMERICAN CONSULTATION

BART, on behalf of FTA, has been in consultation with Andrew Galvan, of The Ohlone Indian Tribe, Ramona Garabay, representative for the Trina Marine Ruano Family, and Anne Marie Sayers of the Indian Canyon Mutsun Band of Coastanoan regarding the Undertaking and its potential to affect historic properties, will continue to consult with these parties, and FTA has invited these

parties to concur in this MOA. Should any of these parties desire to participate in the implementation of this MOA, BART shall consult with these parties to reach consensus regarding the manner in which they may so participate, and regarding any time frames or other matters that may govern the nature, scope, and frequency of such participation.

IV. ADMINISTRATIVE STIPULATIONS

A. Professional Qualifications and Standards

- 1. Professional Qualifications.** Pursuant to section 112(a)(1)(B) of the Act, FTA shall ensure that all actions conducted under stipulation II of this MOA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-39) (PQS) in the appropriate disciplines. However, nothing in this stipulation may be interpreted to preclude any agent or contractor working on historical documentation from using the properly supervised services of persons who do not meet the PQS.
- 2. Documentation Standards.** Written documentation of activities prescribed under stipulation II of this MOA shall conform to the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-40), as well as to standards and guidelines established by SHPO.
- 3. Curation and Curation Standards.** FTA shall ensure that, to the extent permitted under §§ 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by this MOA are curated in accordance with 36 CFR Part 79.

B. Confidentiality

All parties to this MOA acknowledge that information regarding historic properties covered by this MOA is subject to the provisions of section 304 of the Act, and § 6254.10 of the California Government Code relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with said statutes.

C. Resolving Objections

1. Should any MOA signatory object to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect

to the implementation of the MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, FTA shall immediately notify the other parties to this MOA of those objections, and shall consult with the objecting party and with the other parties for no more than 14 days to resolve the objection. Other MOA parties may also raise such objections through any of the signatories to the MOA. Any such signatories shall decide whether to raise the objections with the other signatories of the MOA. FTA shall reasonably determine when this consultation will commence. If the objection is resolved through such consultation, the action subject to dispute may proceed in accordance with the terms of that resolution. If, after initiating such consultation, FTA determines that the objection cannot be resolved through consultation, FTA shall forward all documentation relevant to the objection, including FTA's proposed response to the objection, to the Council, with the expectation that the Council will, within thirty (30) days after receipt of such documentation, do one of the following:

- a. advise FTA that the Council concurs in FTA's proposed response to the objection, whereupon FTA will respond to the objection accordingly. The objection shall thereby be resolved; or
 - b. provide FTA with recommendations, which FTA will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or
 - c. notify FTA that the objection will be referred for comment, pursuant to 36 CFR § 800.7(c), and proceed to refer the objection and comment. FTA shall take the resulting comment into account, in accordance with 36 CFR § 800.7(c)(4) and section 110(1) of the Act. The objection shall thereby be resolved.
2. Should the Council not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FTA may assume the Council's concurrence in its proposed response to the objection and proceed to implement that response. The objection shall thereby be resolved.
 3. FTA shall take into account any Council recommendation or comment provided in accordance with section C.1 of this stipulation, with reference only to the subject of the objection. FTA's responsibility to carry out all actions under this MOA that are not the subjects of the objection will remain unchanged.
 4. At any time during the implementation of the measures stipulated in this MOA, should an objection pertaining to such implementation be raised by

a member of the public, FTA shall notify the other MOA parties in writing of the objection and take the objection into consideration. FTA shall consult with the objecting party and, if the objecting party so requests, with the other MOA parties for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, FTA will render a decision regarding the objection and notify all consulting parties hereunder of its decision in writing. The objection will thereby be resolved. In reaching its decision, FTA will take into account any comments from the consulting parties regarding the objection, including those of the objecting party. FTA's decision regarding the resolution will be final.

5. FTA shall provide the other MOA parties, the Council when the Council has issued comments hereunder, and any parties that have objected pursuant to section C.4 of this stipulation, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.
6. FTA may authorize any action subject to objection under section D of this stipulation to proceed after the objection has been resolved in accordance with the terms of section C.

D. Amendment of the MOA

1. Any signatory to this MOA may propose that this MOA be amended, whereupon the MOA parties will consult for no more than fourteen (14) calendar days to consider the proposed amendment. FTA may extend this consultation period. The amendment process shall comply with 36 CFR § 800.6(c)(7). This MOA may be amended only upon the written agreement of the signatories. If it is not amended, this MOA may be terminated by any signatory in accordance with section E of this stipulation.
2. The HPTP, attachment A, may be amended through consultation as prescribed in section B of stipulation II without amending the MOA proper.

E. Termination

1. If this MOA is not amended as provided for in section D.1 of this stipulation, or if any signatory proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other MOA parties, explain the reasons for proposing termination, and consult with the other MOA parties for at least 30 days to seek alternatives to termination. Such consultation shall not be required if FTA proposes termination because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).

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

F. Duration of this MOA

1. Unless terminated pursuant to section E of this stipulation, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by FTA and the SHPO until FTA, in consultation with the other MOA parties, determines that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have no further force or effect on the day that FTA notifies the other MOA parties in writing of its determination that all stipulations of this MOA have been satisfactorily fulfilled.
2. The terms of this MOA shall be satisfactorily fulfilled within seven (7) years following the date of execution by FTA and the SHPO. If FTA determines that this requirement cannot be met, the MOA parties will consult to reconsider the terms of this MOA. Reconsideration may include the continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, FTA will comply with section E.4 of this stipulation, if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
3. If the Undertaking has not been implemented within seven (7) years following execution of this MOA by FTA and the SHPO, this MOA shall automatically terminate and have no further force or effect. In such event, FTA shall notify the other MOA parties in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with 36 CFR Part 800.

G. Effective Date of this MOA

Pursuant to 36 CFR § 800.6(c)(1)(i), this MOA shall become effective on the date that it has been fully executed by FTA and the SHPO.

V. EXECUTION OF THIS MOA

Execution of this MOA by FTA and the SHPO, its subsequent transmittal by FTA to the Council in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent implementation of its terms, shall evidence, pursuant to 36 CFR § 800.6(c), that this MOA is an agreement with the Council for the purposes of section 110(l) of the Act, and shall further evidence that FTA has taken into account the effects of the undertaking on historic properties and has afforded the Council an opportunity to comment on the Undertaking and its effects on historic properties.

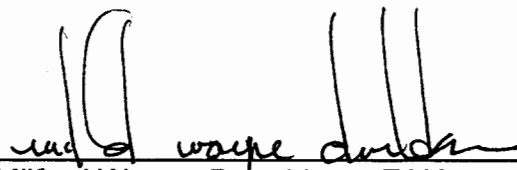
SIGNATORIES:

U. S. DEPT. OF TRANSPORTATION, FEDERAL TRANSIT ADMINISTRATION

By: 
Leslie T. Rogers
Regional Administrator, Region IX

Date: OCT 6 2006


CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: 
Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

Date: 6 OCT 2006

INVITED SIGNATORY:

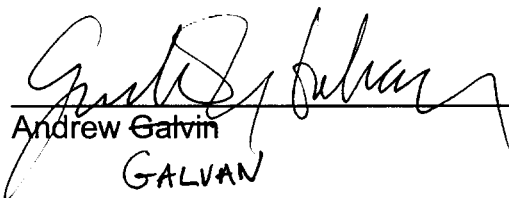
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: 
Thomas E. Margro
General Manager

Date: 10/5/06


CONCURRING PARTIES:

OHLONE INDIAN TRIBE REPRESENTATIVE

By: 
Andrew Galvin
GALVAN

Date: 12 8 2006

TRINA MARINE RUANO FAMILY REPRESENTATIVE

By: 
Ramona Garibay

Date: 10-11-06

Attachments:

Attachment A- Historic Properties Treatment Plan for BART Warm Springs Extension

Attachment B- APE Maps and Description