

APPENDIX F

Section 106 Consultation

Native American Heritage Commission Consultation

01/20/2010 14:44 FAX 916 657 5390

NAHC

001

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-8251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: da_nahc@pscbell.net



January 20, 2010

Richard Norwood
HDR
2720 Gateway Oaks Drive, Suite 300
Sacramento, CA 95833

Sent by Fax: 916-564-4203
Number of Pages: 2

Re: Proposed Hercules Intermodal Transit Center, Contra Costa County

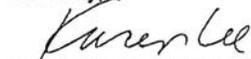
Dear Ms. Norwood:

A record search of the sacred land file has failed to indicate the presence of Native American cultural resources in the immediate project area. The absence of specific site information in the sacred lands file does not indicate the absence of cultural resources in any project area. Other sources of cultural resources should also be contacted for information regarding known and recorded sites.

Enclosed is a list of Native Americans individuals/organizations who may have knowledge of cultural resources in the project area. The Commission makes no recommendation or preference of a single individual, or group over another. This list should provide a starting place in locating areas of potential adverse impact within the proposed project area. I suggest you contact all of those indicated, if they cannot supply information, they might recommend others with specific knowledge. By contacting all those listed, your organization will be better able to respond to claims of failure to consult with the appropriate tribe or group. If a response has not been received within two weeks of notification, the Commission requests that you follow-up with a telephone call to ensure that the project information has been received.

If you receive notification of change of addresses and phone numbers from any of these individuals or groups, please notify me. With your assistance we are able to assure that our lists contain current information. If you have any questions or need additional information, please contact me at (916) 653-4038.

Sincerely,

for: 
Debbie Pilas-Treadway
Environmental Specialist III

**Native American Contacts
Contra Costa County
January 19, 2010**

Jakki Kehl
720 North 2nd Street
Patterson, CA 95363
jakki@bigvalley.net
(209) 892-1060

Ohlone/Costanoan

Muwekma Ohlone Indian Tribe of the SF Bay Area
Rosemary Cambra, Chairperson
PO Box 360791
Milpitas, CA 95036
muvekma@muvekma.org
408-434-1668
408-434-1673

Ohlone / Costanoan

Katherine Erolinda Perez
PO Box 717
Linden, CA 95236
(209) 887-3415

Ohlone/Costanoan
Northern Valley Yokuts
Bay Miwok

The Ohlone Indian Tribe
Andrew Galvan
PO Box 3152
Fremont, CA 94539
chochenyo@AOL.com
(510) 882-0527 - Cell
(510) 687-9393 - Fax

Ohlone/Costanoan
Bay Miwok
Plains Miwok
Patwin

Amah/Mutsun Tribal Band
Irene Zwierlein, Chairperson
789 Canada Road
Woodside, CA 94062
amah_mutsun@yahoo.com
(650) 851-7747 - Home
(650) 851-7489 - Fax

Ohlone/Costanoan

Trina Marine Ruano Family
Ramona Garibay, Representative
16010 Halmar Lane
Lathrop, CA 95330
soaprootmo@msn.com
209-629-8619

Ohlone/Costanoan
Bay Miwok
Plains Miwok
Patwin

Amah/Mutsun Tribal Band
Jean-Marie Feyling
19350 Hunter Court
Redding, CA 96003
amah_mutsun@yahoo.com
530-243-1633

Ohlone/Costanoan

Indian Canyon Mutsun Band of Costanoan
Ann Marie Sayers, Chairperson
P.O. Box 28
Hollister, CA 95024
ams@garlic.com
831-637-4238

Ohlone/Costanoan

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed Hercules Intermodal Transit Center, Contra Costa County

Northwest Information Center Consultation

CALIFORNIA
HISTORICAL
RESOURCES
INFORMATION
SYSTEM



ALAMEDA
COLUSA
CONTRA COSTA
LAKE

MARIN
MENDOCINO
MONTEREY
NAPA
SAN BENITO
SAN FRANCISCO

SAN MATEO
SANTA CLARA
SANTA CRUZ
SOLANO
SONOMA
YOLO

Northwest Information Center
Sonoma State University
1303 Maurice Avenue
Rohnert Park, California 94928-3609
Tel: 707.664.0880 • Fax: 707.664.0890
E-mail: leigh.jordan@sonoma.edu
<http://www.sonoma.edu/nwic>

June 8, 2009

NWIC File No.: 08-1320

Sara Morton
Impact Sciences, Inc.
2101 Webster Street, Suite 1825
Oakland, CA 94612

Re: Record search results for the proposed Hercules Intermodal Transit Center,
Hercules, Contra Costa, California.

Dear Ms. Morton:

Per your request received by our office on April 28, 2009, a records search was conducted for the above referenced project by reviewing pertinent Northwest Information Center (NWIC) base maps that reference cultural resources records and reports, historic-period maps, and literature for Contra Costa County. Please note that use of the term cultural resources includes both archaeological resources and historical buildings and/or structures.

Review of this information indicates that there has been one cultural resource study that covers approximately 10% of the Hercules Intermodal Transit Center project area (Holman 1993: S-15312). This project area contains no recorded cultural resources. Local, state and federal inventories include one recorded historic district, the Hercules Powder Plant (4547-0003-9999) that may include areas within the proposed project area. This property has a status code of 7R, meaning it was identified in a reconnaissance level survey, but has not been evaluated. In addition to these inventories, the NWIC base maps show no recorded buildings/structures.

At the time of Euroamerican contact the Native Americans that lived in the area were speakers of the Karkin language, part of the Costanoan language family (Levy 1978:485). There are no Native American resources in or adjacent to the proposed project area referenced in the ethnographic literature.

Based on an evaluation of the environmental setting and features associated with known sites, Native American resources in this part of Contra Costa County have been found in areas marginal to the San Pablo Bay shore and inland near intermittent and perennial watercourses. The Hercules Intermodal Transit Center project area is located in a valley inlet adjacent to San Pablo Bay shore, and is located adjacent to Refugio Creek. Given the similarity of one or more of these environmental factors, there is a moderate potential of identifying unrecorded Native American resources in the proposed Hercules Intermodal Transit Center project area.

Review of historical literature and maps indicated the possibility of historic-period archaeological resources within the Hercules Intermodal Transit Center project area. The 1916 USGS Mare Island 15' quadrangle map indicates one or two buildings within the proposed project area. With this in mind, there is a moderate potential of identifying unrecorded historic-period archaeological resources in the proposed Hercules Intermodal Transit Center project area.

The 1959 USGS Mare Island 7.5-minute topographic quadrangle depicts one building or structure within the Hercules Intermodal Transit Center project area. These unrecorded buildings/structures meet the Office of Historic Preservation's minimum age standard that buildings, structures, and objects 45 years or older may be of historical value.

RECOMMENDATIONS:

1) There is a moderate possibility of identifying Native American archaeological resources and a moderate possibility of identifying historic-period archaeological resources in the project area. We recommend a qualified archaeologist conduct further archival and field study to identify cultural resources. Field study may include, but is not limited to, pedestrian survey, hand auger sampling, shovel test units, or geoarchaeological analyses as well as other common methods used to identify the presence of archaeological resources. Please refer to the list of consultants who meet the Secretary of Interior's Standards at <http://www.chrisinfo.org>.

2) The area of potential effect may contain buildings or structures within the recorded Hercules Powder Plant Historic District (4547-0003-9999), therefore, it is recommended that the agency responsible for Section 106 compliance consult with the Office of Historic Preservation regarding potential impacts to these buildings/structures.

Project Review and Compliance Unit
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
(916) 653-6624

3) Review for possible historic-period buildings or structures has included only those sources listed in the attached bibliography and should not be considered comprehensive.

4) If archaeological resources are encountered during construction, work should be temporarily halted in the vicinity of the discovered materials and workers should avoid altering the materials and their context until a qualified professional archaeologist has evaluated the situation and provided appropriate recommendations. Project personnel should not collect cultural resources. Native American resources include chert or obsidian flakes, projectile points, mortars, and pestles; and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic-period

resources include stone or adobe foundations or walls; structures and remains with square nails; and refuse deposits or bottle dumps, often located in old wells or privies.

5) It is recommended that any identified cultural resources be recorded on DPR 523 historic resource recordation forms, available online from the Office of Historic Preservation's website: http://ohp.parks.ca.gov/default.asp?page_id=1069

Thank you for using our services. Please contact this office if you have any questions, (707) 664-0880.

Sincerely,



Jillian E. Guldenbrein
Researcher

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION

1725 23rd Street, Suite 100
SACRAMENTO, CA 95816-7100
(916) 445-7000 Fax: (916) 445-7053
calshpo@parks.ca.gov
www.ohp.parks.ca.gov



November 09, 2011

Reply in Reference To: FTA110927A

Leslie T. Rogers
Regional Administrator
US Department of Transportation
Federal Transit Administration
201 Mission Street, Suite 2210
San Francisco, CA 94105

Re: Hercules Intermodal Transit Center Project, City of Hercules, Contra Costa County, California

Dear Mr. Rogers:

Thank you for seeking my consultation regarding the above noted undertaking. Pursuant to 36 CFR Part 800 (as amended 8-05-04) regulations implementing Section 106 of the National Historic Preservation Act (NHPA), the Federal Transit Administration (FTA) is seeking my comments on the effects the proposed undertaking will have on historic properties.

The project consists of construction of a station building, extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new bus terminal, Transit Loop Drive, Civic Plaza, and surface parking. The undertaking will also require restoration and realignment of a portion of Refugio Creek, constructing segments of a recreational trail along the shoreline, and a pedestrian walkway over the railroad tracks. The project will necessitate a grade separation and realignment of a portion of the existing railroad tracks and the relocation of existing utility and gas lines. No specific dimensions for any of the elements were given. The project currently includes two alternatives for track realignment. The Area of Potential Effects, as identified by FTA, consists of 54 acres, however no depth of ground disturbance was detailed. In addition to your letter received September 27, 2011, you have submitted the following documents as evidence of your efforts to identify historic properties in the APE:

- *Cultural Resources Survey Report for the Hercules Intermodal Transit Center* (Sandra Flint, HDR, June 2011)

The FTA has searched the records at the Northwest Information Center and identified that 15 previous studies have been conducted within a quarter mile of the APE. Approximately 10% of the APE had been previously surveyed resulting in the identification of one buried archaeological site, CA-CCO-750. Site CA-CCO-750 is a shell midden discovered during trenching roughly three feet below surface, with the complete areal extent unknown at this time. Site CA-CCO-370 was originally located within the APE in 1978; however a 2000 survey failed to relocate the site. Site P-07-001006, the historic location of the Hercules Powder Company was previously identified

as within the APE through historic documents, however no buildings are extant. The historic Southern Pacific Railroad Grade, currently in use as the Union Pacific Railroad Grade, was also identified by the records search as within the APE.

The APE was subject to a pedestrian survey via 15 meter transects. Several features, including foundations, wharf remnants, pipe channeling, culverts and bridges, retaining walls, and debris associated with the Hercules Powder Company (P-07-001006) were located within the APE during the survey. Additionally, several features associated with the historic railroad grade including foundations, signal markers, culverts, pipes, and a wooden railroad bridge were identified within the APE. No surface manifestation of site CA-CCO-370 was located during the survey.

The FTA has determined that site CA-CCO-750 will be avoided by conditioning that ground disturbing elements in the vicinity of the site not exceed two feet in depth. Additionally the FTA has determined that the various identified features of the Hercules Powder Company within the APE are not eligible for the National Register. The FTA has also determined that the Southern Pacific Rail Road grade and features are not eligible for the National Register of Historic Places. The FTA has determined that there will be No Adverse Effects to historic properties by this undertaking. FTA's consultant, HDR, sent letters to the Native American contacts listed by the NAHC regarding the project on December 3, 2010. One response was received by phone, from Ann Marie Sayers, requesting Native American monitoring during project implementation and specific actions to be taken in the event Native American remains are encountered.

Based on your identification efforts, I have the following comments:

1. Please provide a more detailed project description including dimensions of specific project elements including depth of ground disturbance.
2. Please note that the complete pedestrian bridge should be analyzed, not a partial bridge to be completed at a later date (and presumably without federal funds) as this could constitute segmentation of the undertaking.
3. I **cannot** concur that the Hercules Powder Company features are not eligible for the National Register at this time, as the consultant report identifies on page 18 that "there may be buried remnants of the plant, including foundations or other buried factory related deposits." No testing for such components was conducted within the APE. Additionally, the report is not clear if the full extent of the potential historic property was fully recorded or surveyed, or only components of the Hercules Powder Company facility site.
4. Please be aware that the eligibility discussion *does not* outline the significance of the Hercules Powder Company at the local level.
5. I **cannot** concur that the Southern Pacific Railroad is not eligible for the National Register at this time, as the full resource should be evaluated. **However**, I can concur that the various features within the APE (other than the existing railroad grade) are not contributors to the grade's potential eligibility.
6. Please define whether the railroad grade will be realigned by the undertaking as this is unclear in your submittal.
7. Please perform some subsurface testing to further identify the areal extent and depth of site CA-CCO-750 to ensure the proposed avoidance measures will avoid the site.

8. Please be aware that the discovery measures in the provided report do not meet the requirements of Section 106, and that in the event of a post-review discovery the procedures at 36 CFR 800.13(b) should be followed.
9. Pursuant to 36 CFR 800.5(c)(1), I cannot concur with the FTA's finding that the undertaking will have No Adverse Effects to historic properties at this time.

I look forward to continuing this consultation. Thank you for seeking my comments and considering historic properties as part of your project planning. If you have any questions or concerns, please contact Trevor Pratt of my staff at (916) 445-7017 or at email at tpratt@parks.ca.gov.

Sincerely,



Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

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

1725 23rd Street, Suite 100
SACRAMENTO, CA 95816-7100
(916) 445-7000 Fax: (916) 445-7053
calshpo@parks.ca.gov
www.ohp.parks.ca.gov



April 13, 2012

Reply in Reference To: FTA110927A

Leslie T. Rogers
Regional Administrator
US Department of Transportation
Federal Transit Administration
201 Mission Street, Suite 1650
San Francisco, CA 94105

Re: Hercules Intermodal Transit Center Project, City of Hercules, Contra Costa County, California

Dear Mr. Rogers:

Thank you for seeking my consultation regarding the above noted undertaking. Pursuant to 36 CFR Part 800 (as amended 8-05-04) regulations implementing Section 106 of the National Historic Preservation Act (NHPA), the Federal Transit Administration (FTA) is seeking my comments on the effects the proposed undertaking will have on historic properties.

The project consists of construction of a station building, extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new bus terminal, Transit Loop Drive, Civic Plaza, and surface parking. The undertaking will also require restoration and realignment of a portion of Refugio Creek, constructing segments of a recreational trail along the shoreline, and a pedestrian walkway over the railroad tracks. The project will necessitate a grade separation and realignment of a portion of the existing railroad tracks and the relocation of existing utility and gas lines. The project currently includes two alternatives for track realignment. The Area of Potential Effects, as identified by FTA, consists of 54 acres, with a maximum depth of 5.5 feet, with the exception of boring at least ten feet deep for utilities extending under the railroad corridor and 50 piles which will be driven to a depth of 80 to 110 feet. In addition to your letters received September 27, 2011 and March 12, 2012, you have submitted the following documents as evidence of your efforts to identify historic properties in the APE:

- *Cultural Resources Survey Report for the Hercules Intermodal Transit Center* (Sandra Flint, HDR, June 2011)
- *Addendum Cultural Resources Survey Report of the Hercules Intermodal Transit Center* (Philip Kaijankoski et al, Far Western, February 2012)

The FTA has searched the records at the Northwest Information Center and identified that 15 previous studies have been conducted within a quarter mile of the APE. Approximately 10% of the APE had been previously surveyed resulting in the identification of one buried archaeological site, CA-CCO-750. Site CA-CCO-750 is a shell midden discovered during trenching roughly three feet below surface, with the

complete areal extent unknown at this time. Site CA-CCO-370 was originally located within the APE in 1978; however a 2000 survey failed to relocate the site. Site P-07-001006, the historic location of the Hercules Powder Company was previously identified as within the APE through historic documents, however no buildings are extant. The historic Southern Pacific Railroad Grade, currently in use as the Union Pacific Railroad Grade, was also identified by the records search as within the APE.

The APE was subject to a pedestrian survey via 15 meter transects. Several features, including foundations, wharf remnants, pipe channeling, culverts and bridges, retaining walls, and debris associated with the Hercules Powder Company (P-07-001006) were located within the APE during the survey. Additionally, several features associated with the historic railroad grade including foundations, signal markers, culverts, pipes, and a wooden railroad bridge were identified within the APE. No surface manifestation of site CA-CCO-370 was located during the survey.

The FTA has determined that site CA-CCO-750 will be avoided by conditioning that ground disturbing elements in the vicinity of the site not exceed two feet in depth. Additionally the FTA has determined that the various identified features of the Hercules Powder Company within the APE are not eligible for the National Register. The FTA has also determined that the Southern Pacific Rail Road grade and features are not eligible for the National Register of Historic Places. The FTA has determined that there will be No Adverse Effects to historic properties by this undertaking. FTA's consultant, HDR, sent letters to the Native American contacts listed by the NAHC regarding the project on December 3, 2010. One response was received by phone, from Ann Marie Sayers, requesting Native American monitoring during project implementation and specific actions to be taken in the event Native American remains are encountered.

Based on your identification efforts, I have the following comments:

1. I cannot concur that the Hercules Powder Company property, CA-CCO-818H, as a whole is not eligible for the National Register at this time, as the property extends outside the APE and was not fully recorded for this undertaking, **however**, I can concur that the features present within the APE lack integrity and cannot adequately represent those qualities for which the whole property may be eligible for the National Register.
2. I cannot concur that the whole of the Bayside trail (HER14) is not eligible, as only a segment of this long linear resource was recorded and described, **however** the argument and the lack of integrity of setting due to changes around the trail do not allow this segment to convey any of the qualities which may make the trail as a whole eligible, and therefore changes to this segment would not represent an adverse effect to the larger resource.
3. I have previously concurred that the various features within the APE (other than the existing railroad grade) are not contributors to the grade's potential eligibility
4. I concur that the segment of the Southern Pacific Railroad within the APE is not a contributor, as recording and properly evaluating the whole long linear resource is beyond the scope of this undertaking.
5. Pursuant to 36 CFR 800.4(c), I concur that the remains of the Northern Wharf (HER9/24), the recorded Steel Pipes (HER33), and Sewer Outfall(HER34) are not eligible for the National Register, however I encourage the preservation of the Northern Wharf remnants for interpretation about shipping and the Hercules Powder Company.

6. I concur that the FTA has made a reasonable and good faith effort to identify the subsurface extent of site CA-CCO-750 as it pertains to this undertaking, and given FTA's conditions of limited depth of ground disturbance should avoid the cultural components of the site.
7. Pursuant to 36 CFR 800.5(c)(1), I concur with the FTA's finding that the undertaking will have No Adverse Effects to historic properties., with the condition that an archaeological monitor be present during ground disturbance within and adjacent to the horizontal boundaries of site CA-CCO-750.

If you agree with the conditions that I have proposed, please evidence your agreement by signing the signature block below. Please return the letter to me as soon as possible. Alternatively, you may provide me with a separate letter concurring in the proposed conditions.

Thank you for seeking my comments and considering historic properties as part of your project planning. If you have any questions or concerns, please contact Trevor Pratt of my staff at (916) 445-7017 or at email at tpratt@parks.ca.gov.

Sincerely,

Susan H Stratton for

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

AGREED _____

Leslie Rogers
Leslie Rogers
Regional Administrator

DATE: _____

4/19/2012



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ms. Jean-Marie Feyling
Amah/Mutsun Tribal Band
19350 Hunter Court
Redding, CA 96003

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Feyling:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE. Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,



Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ann Marie Sayers, Chairperson
Indian Canyon Mutsun Band of Costanoan
P.O. Box 28
Hollister, CA 95024

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Sayers:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE.

Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,



Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ms. Jakki Kehl
720 North 2nd Street
Patterson, CA 95363

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Kehl:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE. Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie T. Rogers". The signature is fluid and cursive, with the first name being the most prominent.

Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ms. Rosemary Cambra, Chairperson
Muweka Ohlone Indian Tribe of the SF Bay Area
P.O. Box 360791
Milpitas, CA 95036

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Cambra:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE.

Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed.

On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie T. Rogers". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Mr. Andrew Galvan
The Ohlone Indian Tribe
P.O. Box 3152
Fremont, CA 94539

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Mr. Galvan:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE.

Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|--|--|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

- Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).
- Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.
- Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,



Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ms. Katherine Erolinda Perez
P.O. Box 717
Linden, CA 95236

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Perez:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE.

Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan. | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie T. Rogers". The signature is fluid and cursive, with the first name "Leslie" being the most prominent.

Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

Milford Wayne Donaldson
State Historic Preservation Officer
Office of Historic Preservation
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001

MAR 8 2012

Re: FTA110927A - Follow-Up Consultation
for Area of Potential Effects,
Determination of Eligibility, Finding of
Effects, and Mitigation Efforts in
support of the Hercules Intermodal
Transit Project, Contra Costa County,
California

Dear Mr. Donaldson:

The City of Hercules is proposing to develop the Hercules Intermodal Transit Center (ITC) along the city's waterfront that will include a train station, bus terminal, access roadways, and parking facilities. The City will receive federal funds to develop the project and the Federal Transit Administration (FTA) is acting as the lead federal agency for the project. The FTA is continuing consultation with the State Historic Preservation Officer (SHPO) regarding the undertaking described above; this is our second formal communication regarding this project with your office. We are consulting with you in accordance with 36 Code of Federal Regulations Part 800, implementing Section 106 of the National Historic Preservation Act. We are seeking your concurrence on FTA's designation of the Area of Potential Effects (Attachment 1), the adequacy of identification efforts, determination of National Register of Historic Places eligibility, a finding of no adverse effects, and proposed avoidance efforts for the undertaking.

We received comments from your office on the initial cultural document submitted for the project (*Cultural Resources Survey Report for the Hercules Intermodal Transit Center*, by Sandra Flint, HDR, 2011), summarized as follows:

- Include a project description that details the dimensions of specific project elements. Include complete descriptions of the pedestrian bridge and railroad grade realignments.
- Record and evaluate (at the national and local levels) the full extent of the features associated with the Hercules Powder Company within the project APE, including the potential for buried features and deposits.
- Record and evaluate the full resource identified as the Southern Pacific Railroad.
- Perform subsurface testing to identify the areal extent and depth of prehistoric site CA-CCO-750 to ensure that proposed avoidance measures will not impact the site.

- Present post-review discovery measures in accordance with procedures in 36 CFR 800.13(b).

We have responded to these comments, as documented in Attachment 2 - *Addendum: Cultural Resources Survey Report for the Hercules Intermodal Transit Center*. The document includes a complete description of the project, results of a survey of the expanded Area of Potential Effects, descriptions and full recordation of all cultural resources within the Area of Potential Effects, and a discussion of coring undertaken at CCO-750 for determination of site extent for avoidance. Pursuant to §800.4(c), the sites have been formally evaluated for National Register eligibility, as summarized below.

Based on initial recordation and results of a coring program to determine content and extent of prehistoric site CA-CCO-750 (P-07-002507), it was determined that a portion of the site is intact, contains a diversity of artifacts (lithic debitage, bone tool) and subsistence remains (shellfish, bird and fish bone, and charred plant remains), and has chronological information. As such it appears eligible for the National Register of Historic Places and/or the California Register of Historical Resources based on its unique presence in a heavily impacted urbanized setting, integrity of the deposit, and its ability to address important research questions, such as chronology, subsistence settlement, and exchange. A portion of the site was found to be disturbed, redeposited material that could, however, contain human remains given the high likelihood for their presence in Bay Area shell middens. We are therefore considering all of site CCO-750 eligible for the purposes of this project.

Proposed shallow track and drainage work will be limited to a maximum depth of two feet (0.6 meters) inside the railroad corridor, and to a maximum depth of four feet (1.2 meters) outside the rail corridor in the intact portion of the site. Further, earth disturbances in the redeposited portion of the site will be limited to a maximum depth of 5.5 feet (1.7 meters) so that any human remains that might be present will not be inadvertently disturbed. Additionally, utilities will be relocated in a bore that extends under the site at a minimum depth of 10 feet (3.0 meters) below the surface of the railroad corridor, and existing utilities will be left in their current position below the existing ground surface. The protected area will be clearly delineated in construction plans and noted for avoidance.

The Hercules Plant site, including all associated features within the APE, is not associated with the lives of significant persons (Criterion B), and does not embody important artistic or architectural elements (Criterion C). The Hercules industrial plant clearly played an important role in the founding and subsequent development of the community of Hercules and, therefore, if intact, would have the potential for significance at the local level under Criterion A. However, only a small fraction of buildings even tangentially related to the plant's manufacturing operation remain extant, and none are located within the APE for this project. Because the former Hercules Plant property has suffered a complete loss of integrity within the APE, and severely compromised integrity as a functional whole, it does not appear to meet the criteria for listing in the National Register of Historic Places as an architectural or archaeological resource.

Three other resources within the project APE—a segment of the Bayside trail (HER14 Road), the northern wharf (HER9/24), and steel pipes (HER33)—do not appear eligible to the National Register. They are not associated with important events (Criterion A) or with the lives of significant persons (Criterion B), and do not embody important artistic or architectural elements

(Criterion C). The sites do not contain data which would yield information important in history (Criterion D).

Finally, the Southern Pacific Railroad-Northern Contra Costa Route of the Union Pacific Railroad Tracks (P-07-000813) does not meet the criteria for listing in the National Register of Historic Places. Numerous alterations to the physical aspects of the resource have severely compromised integrity of materials, design, workmanship, feeling, and association. Overall, the changes to the railroad have so substantially degraded the integrity of the resource that it cannot convey a sense of historical time and place. Under National Register Criterion B, the Route is not significant for associations with persons important to history. The railroad is also not significant under National Register Criterion C as an important example of a type, period, or method of construction. Under National Register Criterion D, this railroad is not a significant source (or likely source) of important information regarding history. The property is otherwise documented in a wide body of literature and does not appear to have any likelihood of yielding important information about historic construction materials or technologies.

Per §800.5[a][1], FTA's Finding of Effect for the Hercules Intermodal Transit Center site is that there will be no adverse effects, with standard conditions. Pursuant to §800.6, impacts from the proposed project to historic property CCO-750 can be mitigated through avoidance of the horizontal and vertical extent of both the intact and disturbed deposits. All other cultural resources within the Area of Potential Effects do not appear eligible and no further management is recommended.

Native American involvement in the project has included contact with the Native American Heritage Commission, and continual communication with interested individuals and tribal groups. Mitigation involvement will include consultation for the avoidance measures, and review of all documentation.

We are requesting that the SHPO concur with the following, as detailed above and in the attachments:

- The appropriateness of the APE for the proposed undertaking;
- The adequacy of historic property identification efforts;
- The determination that prehistoric site CA-CCO-750 is eligible for the National Register under Criterion D for the purposes of this project;
- The determination that the Hercules Plant, Bayside trail, northern wharf, steel pipes, and Southern Pacific Railroad-Northern Contra Costa Route of the Union Pacific Railroad Tracks (P-07-000813) are not eligible for the National Register;
- The determination that appropriate mitigation through avoidance will resolve potential adverse effects to site CA-CCO-750;

Thank you for your prompt assistance. Please contact Dale Youngkin of the FTA if you have any concerns or additional questions, at (415) 744-0119 or *Dale.Youngkin@dot.gov*.

Sincerely,



Leslie T. Rogers
Regional Administrator

Enclosed:

Attachment 1 –

Project map.

Attachment 2 -

Addendum: Cultural Resources Survey Report for the Hercules Intermodal
Transit Center



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ms. Ramona Garibay, Representative
Trina Marine Ruano Family
30940 Watkins Street
Union City, CA 94587

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Garibay:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE.

Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

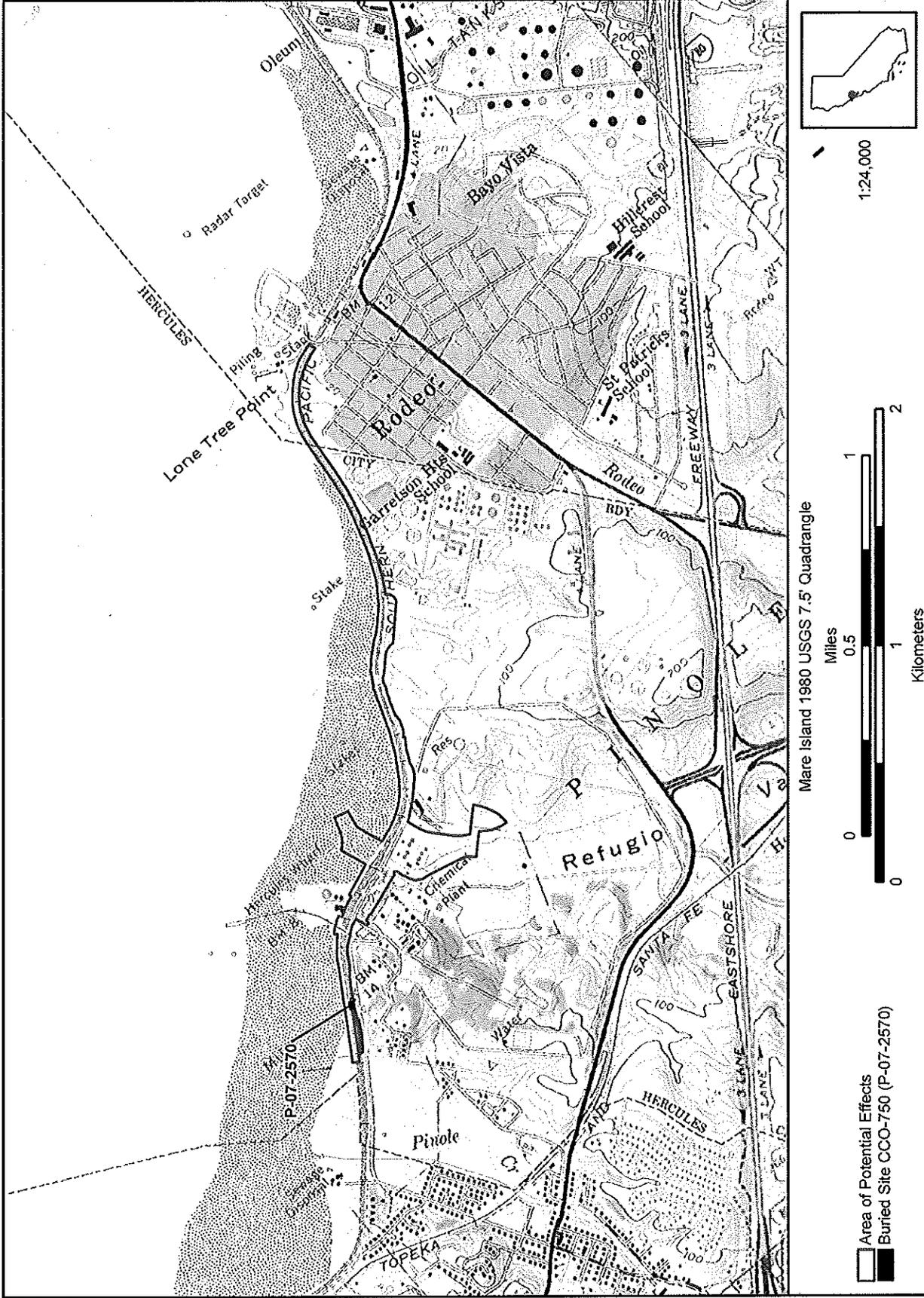
Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,



Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



**Cultural Resources Survey Addendum
Area of Potential Effects**



2365 Iron Point Road, Suite 300
Folsom, CA 95630-8709





U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ms. Linda G. Yamane
1585 Mira Mar Ave
Seaside, CA 93955

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Yamane:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE.

Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwielerlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie T. Rogers". The signature is fluid and cursive, with the first name being the most prominent.

Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

MAR 8 2012

Ms. Irene Zwierlein, Chairperson
Amah/Mutsun Tribal Band
789 Canada Road
Woodside, CA 94062

RE: Updated Section 106 Consultation for
Hercules Intermodal Transportation Center
Project, City of Hercules, Contra Costa
County, California

Dear Ms. Zwierlein:

The Federal Transit Administration (FTA) and the City of Hercules (City) are preparing a Final Environmental Impact Statement (FEIS) for the proposed construction of an intermodal transit center, located in the City of Hercules. The project will receive funding from the FTA, so FTA is the lead federal agency. The City of Hercules is the local project sponsor, and is the lead local agency. As a federally funded project, it must comply with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800: Protection of Historic Properties (Section 106). Section 106 regulations require that federal agencies consult with federally recognized Native American tribes in all phases of the Section 106 process when an agency undertaking may have the potential to affect Native American historic properties on or off tribal lands. FTA undertook this consultation as part of the preparation of the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS), as described in more detail below. However, further studies have been undertaken and FTA is therefore requesting your review and response within 30 days of this updated information in accordance with the Section 106 process.

The Draft EIR/EIS scoping process began with the publication of a Notice of Intent in the Federal Register on November 20, 2009 as required under NEPA and a Notice of Preparation on November 24, 2009 as required under the California Environmental Quality Act (CEQA). A scoping meeting was held on December 8th, 2009 in Hercules. The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010; comments were received until November 15, 2010. The Final EIR was prepared separately and approved by the City of Hercules, the local lead agency, on August 8, 2011, concluding the CEQA process. The FEIS is expected to be released in late March, 2012 with an anticipated Record of Decision (ROD) to follow.

Project Description

The proposed project would include the construction of an intermodal transportation center situated along a segment of the existing Union Pacific rail line located in the City of Hercules in Contra Costa County, California near Hercules Point on San Pedro Bay (Attachment 1). The project would include the following infrastructure improvements: Construction of a passenger train station building; grade separation and realignment of a portion of the existing Union Pacific Railroad (UPRR) tracks, including the construction of a rail platform, retaining walls and the replacement of a railroad bridge crossing Refugio Creek; the extension of John Muir Parkway, including the construction of Bayfront Boulevard over Refugio Creek, a new Transit Loop Drive, a Civic Plaza and surface parking; restoration and realignment of a portion of Refugio Creek from San Pablo Bay to the existing restored segment near Tsushima Bridge; construction of segments of the East Bay Regional Park District's recreational trail along the shoreline; relocation of existing utility lines; and construction of an outfall drainage structure into Refugio Creek and a new creek outfall. There are two options for the relocation of railroad tracks, Track Option A and Track Option B. The APE includes all improvements and both track relocation options. A more detailed description of the project and setting is located in Attachments 2 and 3.

Area of Potential Effects

FTA has determined that the Area of Potential Effects (APE) contains 63 acres that encompass all improvements, including both track relocation options. All construction activities and staging would occur within the APE. The project area is within unsectioned lands in the Rancho Pinole land grant, Mount Diablo Meridian, as depicted on the Mare Island, California 7.5-minute U.S. Geological Survey topographic quadrangle (Attachment 1).

Identification of Historic Properties¹

In the effort to identify historic properties within the APE, the City of Hercules undertook a records search from the Northwest Information Center (NWIC) at Sonoma State University. The research indicates that one previously recorded prehistoric archaeological site (P-07-002570) is located within the APE of Track Option B. The site is a buried shell midden encountered during the emplacement of a fiber optic line in 1999. No record of a formal evaluation of the site has been completed; however, for planning purposes, it is presumed to be eligible to the National Register of Historic Places for the current project.

The background research further shows that remains associated with historic-period resources also are present in the APE, including the Hercules Powder Company (No. P-07-001006) and the Union Pacific Railroad (UPRR) grade. The NWIC files indicate that the UPRR was not previously recorded and that the site of the Hercules Powder Company was identified during a previous study and listed with the NWIC, but not formally recorded as an archaeological site.

¹ Under 36 CFR 800.16(l)(1), historic properties are "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior."

A cultural resources pedestrian survey of the entire APE was carried out to verify locations of previously recorded cultural resources, to assess their current condition, and to examine all accessible lands not previously surveyed, or which were surveyed to less than adequate standards, to identify previously unrecorded archaeological sites that may be present in the APE.

Archaeological surveys were completed on December 3, 2009, March 2, 2010, September 13 and 20, 2010, and January 13, 18 and 19, 2012. No new archaeological sites were encountered during the survey and no surface evidence of the buried shell midden site (P-07-002570) was observed. On January 13, 2012 the City of Hercules and its consultants completed subsurface investigations to delineate the boundaries of the shell midden to ensure avoidance of the site. The site lies at a depth of 1.5 to 2 meters (5 to 6.5 feet) below the ground surface. An historic archaeologist completed a pedestrian survey of the project area on January 18 and 19, 2012. In response to the request for the additional information from the State Historic Preservation Officer (SHPO,) the UPRR and the Hercules Powder Company were both formally documented.

Because prehistoric site P-07-002570 is currently assumed to be eligible and is located within the APE for Track Option B, this alternative has been designed to avoid any adverse effects to the site. Activities within the Track Option B footprint and in the vicinity of the shell midden include minor excavation (less than 2 feet) to construct a new track (deposit ballast and install tracks) and relocating existing utilities. The approach for avoiding the site would consist of limiting ground disturbance in the area to less than 2 feet below ground surface and relocating utilities below the site. Existing utilities would be abandoned in place and relocated through directional drilling and installing utilities beneath the buried resource. Archaeological monitoring would also occur during any ground disturbing work in the vicinity of the site.

As part of the NEPA/CEQA process, the FTA contacted the Native American Heritage Commission (NAHC). The NAHC provided Tribal contacts (listed in the table below) for coordination under Section 106. In accordance with 36 CFR 800.3, FTA sent information regarding the proposed project to the NAHC as well as contacts provided by the NAHC in 2010. Information was sent twice in 2010 due to an expansion of the APE to encompass a new track alternative (Track Option B) that was not identified in the first communication. In letters dated November 23, 2010 and January 20, 2010 the NAHC responded that a record search of the sacred land file failed to indicate the presence of Native American cultural resources in the immediate project area. From the contacts provided from the NAHC, one response was received. This response came via telephone from Ms. Ann Marie Sayers, chairperson of the Indian Canyon Mutsun Band of Costanoan. Ms. Sayers expressed an interest in being contacted when project grading begins and in the event of any inadvertent discovery of any human remains. Ms. Sayers also expressed interest in monitoring in the vicinity of archaeological site P-07-002570 or any other Native American sites that might be found. A memorandum recording her comments is presented in Attachment 2 of Appendix 1. Ms. Sayers was contacted on December 28, 2011 to inform her of the boundary definition work and to inquire if she had an interest in serving as the Native American monitor for the proposed project site work. However, Ms. Sayers did not reply.

Native American Heritage Commission Identified Tribal Contacts

| Name | Tribal Affiliation |
|---|---|
| Jakki Kehl | Ohlone/Costanoan |
| Katherine Erolinda Perez | Ohlone/Costanoan; Northern Valley Yokuts Bay Miwok |
| Linda G. Yamane | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Irene Zwierlein, Chairperson | Ohlone/Costanoan |
| Amah/Mutsun Tribal Band; Jean-Marie Feyling | Ohlone/Costanoan |
| Indian Canyon Mutsun Band of Costanoan; Ann Marie Sayers, Chairperson | Ohlone/Costanoan |
| Muwekma Ohlone Indian Tribe of the SF Bay Area; Rosemary Cambra, Chairperson | Ohlone/Costanoan |
| The Ohlone Indian Tribe; Andrew Galvan | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |
| Trina Marine Ruano Family; Ramona Garibay, Representative | Ohlone/Costanoan; Bay Miwok; Plains Miwok; Patwin |

The FTA initiated consultation with the SHPO in September 2011 with submittal of the Cultural Resources Survey for the proposed project, and proposed a finding of no adverse effect to cultural resources. On November 9, 2011, the SHPO requested additional information and investigations to substantiate the finding of no adverse effect to cultural resources. The City of Hercules and its consultants have recently completed the additional archaeological surveys and investigations of the proposed project site. This letter to you provides the results of the additional information collected as a result of the January, 2012 work discussed above. It should be noted that no new information was obtained as a result of the additional work, but the additional work provided for more defined boundaries of the previously identified cultural resources and substantiated that these resources could be avoided by the proposed project design. FTA is therefore continuing consultation under Section 106 by providing you with the updated information from the additional survey work performed and requesting your input regarding the proposed project and its potential impacts. In particular, FTA is writing to inform you that we propose a finding of no adverse effect to cultural resources, per 36 CFR 800.5(b). We would appreciate your review of this project and look forward to receiving your response within 30 days of the date of this letter per 36 CFR 800.5(c).

Enclosed you will find the following materials in support of our consultation effort:

Attachment 1: USGS topographic quadrangle depicting the location of the undertaking and the Area of Potential Effects (APE).

Attachment 2 Report: Cultural Resource Survey for the Hercules Intermodal Transit Center Project, Hercules, Contra Costa County, California. Report Attachments include documentation of Native American consultation and Site Record Forms.

Attachment 3 Report Addendum: Cultural Resources Survey Report, February 2012 (draft).

Thank you for your assistance with this undertaking. If you have any questions or require additional information regarding the attached APE Map or other aspects of this work. Please contact Paul Page, FTA, at (415) 744-2734 or Dale Youngkin, FTA, at (415) 744-0119.

Sincerely,



Leslie T. Rogers
Regional Administrator

Attachments: (1) APE Map
(2) Report
(3) Addendum