

Appendix E

Cultural Resources Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG THE
PENINSULA CORRIDOR JOINT POWERS BOARD,
THE FEDERAL TRANSIT ADMINISTRATION, AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING IMPLEMENTATION OF THE CALTRAIN ELECTRIFICATION PROGRAM
SAN FRANCISCO, SAN MATEO, AND SANTA CLARA COUNTIES, CALIFORNIA**

WHEREAS, the Peninsula Corridor Joint Powers Board (JPB) and the Federal Transit Administration (FTA) are acting as joint lead agencies for the Caltrain Electrification project that proposes to provide for the conversion of diesel-hauled trains to electric-hauled trains for a portion of the existing Caltrain commuter rail service between San Francisco to San Jose, California; and

WHEREAS, the JPB and the FTA have determined that the project would constitute an Undertaking under 36 CFR 800.16(y), which requires compliance with Section 106 of the National Historic Preservation Act (16 USC 470f); and

WHEREAS, the project area of potential effects (APE) is known to include 11 recorded archaeological sites and could include portions of another 10 recorded archaeological sites; and

WHEREAS, many of these sites have not been evaluated for their eligibility for the National Register of Historic Places or the California Register of Historical Resources; and

WHEREAS, the project corridor passes through three zones of special sensitivity for cultural resources (the Hamilton shell mound zone, the vicinity of the Third Mission Santa Clara, and Tamien Station); and

WHEREAS, portions of the project APE includes paved and built-over areas and areas of private land not accessible for cultural resources inventory, and areas with high potential for buried archaeological deposits that cannot be accurately located prior to construction; and

WHEREAS, the project vicinity is known to contain Native American human remains; and

WHEREAS, at such time as any unevaluated cultural resources may be discovered during the project, it may require archaeological evaluation, data recovery, Native American consultation, and/or other historic preservation activities, in compliance with Section 106 and concurrent with active construction; and

WHEREAS, project design is not completed and the locations of all potential impacts have not been determined; and

WHEREAS, the JPB has consulted with the California State Historic Preservation Officer (SHPO) in accordance with regulations implementing Section 106 of the National Historic Preservation Act; and

WHEREAS, the JPB has consulted with the Native American Heritage Commission and the local Native American community regarding the cultural sensitivity of the project area; and

WHEREAS, the JPB has chosen to prepare this Programmatic Agreement to complete the final identification and evaluation of potential historic properties, and provide for the resolution of any adverse effects on historic properties within the Undertaking's APE subsequent to its approval of the Undertaking; and

WHEREAS, the JPB and the FTA shall make the terms and conditions of this Programmatic Agreement part of the conditions of any permissions and permits issued by the FTA for this project;

NOW, THEREFORE, the JPB, the FTA, and the SHPO agree that the Project shall be implemented in accordance with the following stipulations to take into account the effects of the Undertaking on historic properties; and further agree that these stipulations shall govern the Undertaking and all of its parts until this PA expires or is terminated

STIPULATIONS

The FTA, in consultation and cooperation with the JPB, shall ensure that the following stipulations of this Programmatic Agreement are carried out:

I. AREA OF POTENTIAL EFFECTS

The Undertaking's area of potential effects (APE) is depicted in Appendix A and Appendix B of the Archaeological Inventory for the Caltrain Electrification Program Alternative in San Francisco, San Mateo, and Santa Clara Counties, California (Far Western 2002); and the revised APE is depicted in Figures 2a through 2j of the July 2008 *Cultural Resources Addendum for the Caltrain Electrification Program Alternative: San Francisco, San Mateo, and Santa Clara Counties, California* (Far Western 2008). Those two documents comprise Attachment A of this PA. The APE set forth hereunder may be amended through consultation among the PA parties without amending the PA proper.

II. IDENTIFICATION AND TREATMENT OF HISTORIC PROPERTIES

- A. The JPB and the FTA have chosen, pursuant to 36 CFR § 800.4(b)(2) and 800.14(b), to complete the final identification and evaluation of historic properties in the Undertaking's APE subsequent to the agency's approval of the Undertaking. The JPB and the FTA chose to implement this phased identification, evaluation, and application of the criteria of adverse effect because of consideration for access constraints posed by urban overlay of the APE; and because exact locations of direct impact areas are only generally known; and because the full nature, type, and extent of buried archaeological deposits and features are unknown.
- B. The JPB and the FTA shall, upon their decision to proceed with and prior to implementation of the Undertaking, complete the effort to identify, evaluate, and apply the criteria of adverse effect to historic properties within the APE in accordance with 36 CFR 800.4(b)(1), 800.4(c)(d), and 800.5(a)(1).
- C. As outlined in the Data Recovery and Late Discovery Treatment Plan (Attachment C to this PA), completion of the identification of historic properties within the APE will include the following:
 1. Those areas not accessible for survey shall be inventoried for cultural resources once access has been granted and before construction begins.
 2. In those areas covered with pavement or other obstructions, a qualified archaeologist shall monitor removal of the obstruction (and any underlying base, foundations, etc.) and inspect the ground for cultural materials.

3. When the final project design is completed, a qualified professional archaeologist shall review the design to ensure that all potential impacts to eligible or unevaluated cultural resources have been identified.
4. In those areas with "high" or "very high" potential for buried sites, a qualified geoarchaeologist shall conduct exploratory trenching or coring of areas where subsurface project disturbance is planned, prior to that disturbance. Any cultural resources discovered during exploratory trenching or coring shall be protected or evaluated. Evaluation will follow the research design and recommendations presented in the Data Recovery/Late Discoveries Treatment Plan (Attachment C to this Agreement).
5. Where avoidance of impacts is not feasible, a qualified professional archaeologist will conduct limited sub-surface testing before any ground-disturbing project work is done within 50 meters of a known archaeological site. The objectives of the testing will be to delineate the extent and depth of the site within the project APE; determine whether human remains are present within the APE; and assess the nature and potential significance of the archaeological deposit within the APE. The work will be guided by the Data Recovery/Late Discoveries Treatment Plan. All testing within a prehistoric or ethnographic site (including Mission-era sites) will include consultation with the local Native American community.
6. If any ground-disturbing project work is planned within the three zones of special sensitivity (the Hamilton shell mound zone, the vicinity of the Third Mission Santa Clara, and Tamien Station), a qualified archaeologist will conduct exploratory trenching or coring of areas where subsurface project disturbance is planned, prior to that disturbance. Any cultural resources discovered during exploratory trenching or coring will be protected or evaluated. Archaeological investigations in the vicinity of the archaeological preserve at the Third Mission (CA-SCL-30/H) should be guided by the recommendations presented by Allen et al. (2003) or by anticipated updates to that document. Archaeological investigations in the other two zones of special sensitivity will be guided by the Data Recovery/Late Discoveries Treatment Plan.
7. The PA parties agree that any human remains and related items discovered during the implementation of the terms of this PA and of the Undertaking will be treated in accordance with the requirements of §7050.5(b) of the California Health and Safety Code. If, pursuant to §7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of §5097.98(a)-(d) of the California Public Resources Code. The JPB and the FTA shall ensure that the remains are not damaged or disturbed further until all stipulations in Section 7050.5 and Section 5097.98 have been met.
8. The JPB and the FTA shall ensure that historic, architectural, ethnographic, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of, persons meeting qualifications set forth in the Secretary of the Interior's Professional Qualification Standards (36 CFR 61).

III. REPORTING REQUIREMENTS AND REVIEWS

- A. Within one year of the completion of all fieldwork, the JPB and the FTA shall provide a draft technical report on the methods and results of inventory, geoarchaeological exploration, evaluation, and/or data recovery to the SHPO for review.

- B. The SHPO shall have thirty (30) days to review the draft and comment on the level of effort, results, and eligibility recommendations; those comments shall be incorporated into the final technical report, as appropriate. Lack of response by the SHPO shall not preclude the JPB and the FTA from authorizing the final technical report.
- C. Within thirty (30) days of receipt of comments on the draft technical report, the JPB and the FTA shall submit the final technical report to the SHPO, the appropriate CHRIS Information Center, and the appropriate Native American tribe(s), and shall make it available to other interested persons who meet the confidentiality requirements. The technical report shall not be distributed to the general public, except in an abridged form that does not include sensitive information about site locations or human remains.
- D. All reports generated as a result of this PA and attachments shall be consistent with contemporary professional standards and the Secretary of the Interior's guidelines.

IV. NATIVE AMERICAN CONSULTATION

The JPB and the FTA have consulted with the Native American Heritage Commission and with individuals and groups identified by the Native American Heritage Commission regarding the proposed Undertaking and its effects on historic properties. The JPB and the FTA will continue to consult with these individuals and groups and will afford them, should they so desire, the opportunity to participate in the implementation of the PA and of the Undertaking.

V. LATE DISCOVERIES AND UNANTICIPATED EFFECTS

If the JPB or the FTA determines, during implementation of the Treatment Plan or after construction of the Undertaking has commenced, that either the implementation of the Treatment Plan or the Undertaking will affect a previously unidentified property that may be eligible for the National Register, or affect a known historic property in an unanticipated manner, they will address the discovery or unanticipated effect in accordance with the Data Recovery and Late Discoveries Treatment Plan, which is Appendix B to this PA.

VI. ADMINISTRATIVE PROVISIONS

A. STANDARDS

1. **Definitions.** The definitions provided at 36 CFR 800.16 are applicable throughout this PA.
2. **Professional Qualifications.** The JPB and the FTA will ensure that only individuals meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 4473839) in the relevant field of study carry out or review appropriateness and quality of the actions and products required by this PA. However, nothing in this stipulation may be interpreted to preclude the JPB and the FTA or any agent or contractor thereof from using the properly supervised services of persons who do not meet the PQS.
3. **Documentation Standards.** Written documentation of activities prescribed by Stipulation II of this PA shall conform to the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic*

Preservation (48 FR 44716-44740), as well as to applicable standards and guidelines established by the SHPO.

4. **Curation Standards.** The JPB and the FTA shall ensure that, to the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by this PA are curated in accordance with 36 CFR 79.

B. CONFIDENTIALITY

The PA parties acknowledge that historic properties covered by this PA are subject to the provisions of Section 304 of the National Historic Preservation Act and Section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this PA are consistent with said sections.

C. RESOLVING OBJECTIONS

1. Should any party to this PA object at any time in writing to the manner in which the terms of this PA are implemented, to any action carried out or proposed with respect to implementation of the PA (other than the Undertaking itself), or to any documentation prepared in accordance with and subject to the terms of this PA, the JPB and the FTA shall immediately notify the other PA parties of the objection, request their comments on the objection within 15 days following receipt of the JPB's notification, and proceed to consult with the objecting party for no more than 30 days to resolve the objection. The JPB and the FTA will honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.
2. If the objection is resolved during the 30-day consultation period, the JPB and the FTA may proceed with the disputed action in accordance with the terms of such resolution.
3. If at the end of the 30-day consultation period, the SHPO determines that the objection cannot be resolved through such consultation, then the SHPO shall forward all documentation relevant to the objection to the Advisory Council on Historic Preservation (ACHP), including the JPB and the FTA's proposed response to the objection, with the expectation that the ACHP will, within thirty (30) days after receipt of such documentation, do the following:
 - a.) Advise the SHPO that the ACHP concurs in the JPB and the FTA's proposed response to the objection, whereupon the JPB will respond to the objection accordingly. The objection shall thereby be resolved; or
 - b.) Provide the SHPO with recommendations, which the JPB and the FTA will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or
 - c.) Notify the JPB and the FTA that the objection will be referred for comment pursuant to 36 CFR 800.7(c) and proceed to refer the objection and comment. The JPB and the FTA shall take the resulting comments into account in accordance with 36 CFR § 800.7(c)(4) and Section 110(1) of the National Historic Preservation Act. The objection shall thereby be resolved.
4. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the JPB, the FTA, and the SHPO may assume the ACHP's concurrence in the proposed response to the objection, and the JPB and the FTA may proceed to implement that response. The objection shall thereby be resolved.

5. The JPB and the FTA shall take into account any of the ACHP's recommendations or comments provided in accordance with this stipulation with reference only to the subject of the objection.
6. The JPB and the FTA's responsibility to carry out all actions under this PA that are not the subjects of the objection shall remain unchanged.
7. The JPB and the FTA shall provide all parties to this PA, and the ACHP, if the ACHP has commented, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.
8. The JPB and the FTA may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

D. AMENDMENTS

Any signatory party to this PA may propose that this PA be amended, whereupon all signatory parties shall consult for no more than 30 days to consider such amendment. The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the agreement in accordance with section E of this stipulation.

E. TERMINATION

1. If this PA is not amended as provided for in Section D of this stipulation, or if any of the signatory propose termination of this PA for other reasons, the signatory party proposing termination shall, in writing, notify the other PA parties, explain the reasons for proposing termination, and consult with the other parties for at least 30 days to seek alternatives to termination. Such consultation shall not be required if the JPB and the FTA propose termination because the Undertaking no longer meets the definition set forth in 36 CFR 800.16(y).
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with the terms of that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this PA by promptly notifying the other PA parties in writing. Termination hereunder shall render this PA without further force or effect.
4. If this PA is terminated hereunder, and if the JPB and the FTA determines that the Undertaking will nonetheless proceed, then the JPB and the FTA shall comply with the requirements of 36 CFR 800.3 thru 800.6.

F. DURATION OF THE PA

1. Unless terminated pursuant to Section E. of this stipulation, or unless it is superseded by an amended PA, this PA will be in effect following execution by the signatory parties until the JPB and the FTA, in consultation with the other signatory parties, determines that all of its stipulations have been satisfactorily fulfilled.
2. The terms of this PA shall be satisfactorily fulfilled within ten (10) years following the date of execution by the signatory parties. If the JPB and the FTA determine that this requirement cannot be met, the PA parties will consult to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment of the PA, or termination. In the event of termination, the JPB and the FTA will comply with section E.4 of this stipulation if it

determines that the Undertaking will proceed notwithstanding termination of this PA.

3. If the Undertaking has not been implemented within ten (10) years following execution of this PA, this PA shall automatically terminate and have no further force or effect. In such event, the JPB and the FTA shall notify the other signatory parties in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with 36 CFR Part 800.

G. EFFECTIVE DATE


This PA will take effect on the date that it has been executed by the JPB, the FTA, and the SHPO.

H. EXECUTION

Execution of this PA by the JPB, the FTA, and the SHPO, its filing with the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), and subsequent implementation of its terms, shall evidence, pursuant to 36CFR 800.6(c), that this PA is an agreement with the ACHP for purposes of Section 110(1) of the National Historic Preservation Act, and shall further evidence that the JPB and the FTA have afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that the JPB and the FTA have taken into account the effects of the Undertaking on historic properties.

SIGNATORIES

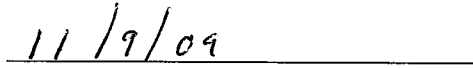
We, as signatories of this Programmatic Agreement, concur with its provisions and will follow the procedures and stipulations outlined above.



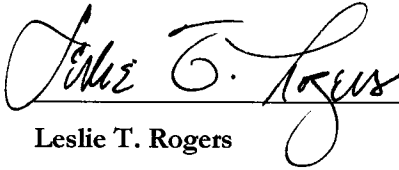
Michael J. Scanlon

Executive Director

Peninsula Corridor Joint Powers Board



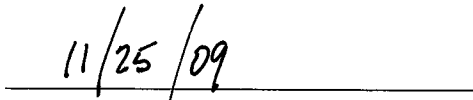
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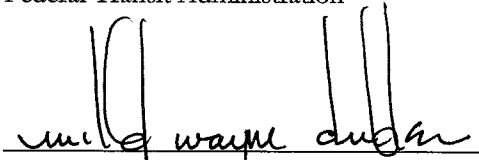
Leslie T. Rogers

Region IX Administrator

Federal Transit Administration



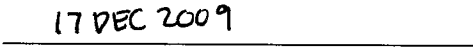
Date



Milford W. Donaldson

State Historic Preservation Officer

California State Office of Historic Preservation



Date