



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

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

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MAY 20 2015

Mr. Farhad Mansourian
General Manager
Sonoma-Marín Area Rail Transit
5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954

Re: Environmental Assessment and Finding
of No Significant Impact for the Sonoma-
Marín Area Rail Transit Downtown San
Rafael to Larkspur Extension

Dear Mr. Mansourian,


Based on our review of the Environmental Assessment, dated December 2014, the Federal Transit Administration (FTA) has issued a Finding of No Significant Impact (FONSI) for the proposed Downtown San Rafael to Larkspur Extension. A copy of the FONSI is enclosed.

The FONSI and supporting documentation should be made available to affected government agencies and the public and should be posted on the project website. A Notice of Availability for the FONSI should be published in local newspapers and should also be provided directly to affected government agencies, including State intergovernmental review contacts established under Executive Order 12372.

Please note that the standard terms and conditions of the grant contract will require the Sonoma-Marín Area Rail Transit to undertake the mitigation actions identified in the Environmental Assessment and FONSI.

Thank you for your cooperation in meeting the requirements of the National Environmental Policy Act. If you have any questions about our review, please contact Brenda Pérez, Community Planner, at (415) 744-2731.

Sincerely,


Leslie T. Rogers
Regional Administrator

Enclosure

Finding of No Significant Impact

Grant Applicant: Sonoma-Marín Area Rail Transit District (SMART)

Project: Sonoma-Marín Area Rail Transit Downtown San Rafael to Larkspur Extension

Project Location: Cities of San Rafael and Larkspur, California

The Environmental Assessment (EA) for the SMART San Rafael to Larkspur Extension (Project) was prepared by SMART in cooperation with the Federal Transit Administration (FTA) pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332); Federal Transit Law (49 U.S.C. Chapter 53); the Clean Air Act (42 U.S.C. 7401); the National Historic Preservation Act (NHPA) (54 U.S.C. 300101); Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303); the Endangered Species Act of 1973 (16 U.S.C. 1531); the Magnuson-Stevens Fishery Conservation and Management Act (50 U.S.C. 600); and Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). This Finding of No Significant Impact (FONSI) hereby incorporates by reference the December 2014 EA and the May 2015 Addendum to the EA.

Background

The EA evaluated the extension of passenger rail service from Downtown San Rafael southwards to Larkspur, in Marin County, California (Project). The Project would extend passenger rail service two miles from the terminus of a locally funded project that is currently under construction by SMART that will eventually operate approximately 43 miles of passenger rail service from Downtown San Rafael northwards to Airport Boulevard in Santa Rosa, Sonoma County, California.

The Project will provide a connection between SMART passenger rail and the Larkspur Ferry Terminal. The ferry terminal provides ferry service from Larkspur to Downtown San Francisco, where access exists to the Bay Area Rapid Transit (BART) system, San Francisco Municipal Railway (MUNI), Caltrain, Alameda-Contra Costa Transit system, Golden Gate Transit system, Amtrak, Greyhound Bus service, and area airports. By providing a fixed-guideway connection near the Larkspur ferry terminal, SMART riders will gain access to the greater Bay Area transit network.

Description of the Project

Section 2.2.2 of the EA provides a detailed description of the Project. The Project would use the inactive Northwestern Pacific (NWP) Railroad rail right-of-way (ROW) for the extension of rail service from Downtown San Rafael to Larkspur. The NWP historically provided freight and limited passenger rail service between Marin County and points northward. The ROW was acquired by the Golden Gate Bridge Highway and Transportation District (GGBHTD) and the Marin County Transit District (Marin Transit) when freight service was abandoned. The ROW was acquired specifically to preserve the property for future public transit use. Through a 2005 Memorandum of Understanding (MOU), the ROW was transferred to SMART in 2006. The stretch of the rail corridor proposed for use is still in place, but it has been non-operational for several decades. The ROW remains intact but would require limited improvements to be

converted from its existing condition as an inactive freight railway to an active passenger railway. Railway improvements are summarized below, and include trackwork, trestle rehabilitation or replacement, the partial realignment of West Francisco Boulevard, at-grade crossing improvements, and construction of a passenger rail station in Larkspur. Acquisition of additional ROW would not be required to construct and operate the extension.

Trackwork. Trackwork would include installing ballast, ties, rail, and other track material, including tie plates, spikes or fasteners, and rail anchors. All existing and inoperable NWP Railroad trackwork would be re-laid as part of the Project, with excavation of the existing track bed typically not to exceed the depth of the existing ties.

Trestle Bridges. Three wooden trestles are in place along the alignment – the San Rafael Creek Trestle, the Unnamed Channel Trestle, and the Woodland Avenue/Bellam Boulevard Trestle (see page 2-30 of the EA). These trestles were installed as part of the former NWP Railroad operation and have been out of use for several decades.

West Francisco Boulevard Partial Realignment. As currently configured, the existing rail alignment crosses West Francisco Boulevard at grade immediately south of the San Rafael Creek crossing. The alignment then crosses at grade over two additional roadways (Irwin Street and Rice Drive) further southwards along the alignment. As part of the Project, the existing locations of West Francisco Boulevard and the railroad alignment would be “flipped” between the San Rafael Creek crossing and Rice Drive. Doing this would eliminate two at-grade crossings at West Francisco Boulevard and Irwin Drive, providing more efficient and safe rail operations, and also would eliminate disruptions to local traffic during train movements through the area. The total length of West Francisco Boulevard that would be “flipped” would be approximately 1,800 feet and would run approximately from just south of Second Street to Rice Drive.

At-Grade Road Crossings. The existing rail alignment between Downtown San Rafael and Larkspur includes six public at-grade roadway crossings. From north to south, these are: 1) Third Street; 2) Second Street; 3) West Francisco Boulevard; 4) Irwin Street; 5) Rice Drive; and 6) Andersen Drive. Two of these crossings would be eliminated with the aforementioned realignment of West Francisco Boulevard between Second Street and Rice Drive. The improvements at the Andersen Drive crossing would be implemented by the City of San Rafael, per the terms of a California Public Utilities Commission (CPUC) order issued in 1997, which required the City to design and implement a suitable crossing when rail service was resumed. The City has been working with SMART to design a crossing that would have minimal effect on traffic operations, would meet the CPUC’s criteria and SMART’s operational requirements, and that would fit within the City’s existing budget as well as within the existing timeline for the planned operation of the SMART rail service. As local lead agency for the Andersen Drive crossing improvement project, the City will undertake its own environmental review process under the terms of the California Environmental Quality Act (CEQA) (California Public Resources Code 21000-21177).

Vehicular traffic at all of the at-grade crossings would be controlled by bells, flashing beacons, and gates. Roadway surfaces at each crossing would be upgraded. All at-grade crossings would

be designed and approved in compliance with CPUC requirements and in consultation with the City of San Rafael.

Larkspur Station. The Larkspur Station would have boarding platforms that would extend the full length of the passenger boarding area, permitting level boarding to accessible cars of all trains stopping at the station. The station would be compliant with the Americans with Disabilities Act, and equipped with a shelter, lighting, and other amenities such as signage, schedules, bike lockers, leaning bars, information kiosks, and ticket vending machines. Adequate space for bus, van and shuttle, and taxicab and passenger vehicle drop-off also would be provided. A tailtrack would extend beyond the platform to provide storage for rail vehicles. Following the morning commute period, vehicles would be stored on the tailtracks and staged for later use during the evening commute period. Beyond the tailtrack, a parking area would be provided with approximately 70 parking spaces.

Alternatives Considered

Two alternatives were considered: Alternative 1 – No Action, which describes future transportation facilities and services in 2040 if the Project were not built; and Alternative 2 – the Downtown San Rafael to Larkspur Extension, which is the Project described above.

Alternative 1, the No Action Alternative, includes the existing highway network and transit service for which funding sources have been identified, and have been included in the constrained regional transportation plan (RTP), known locally as Plan Bay Area, for implementation by 2040. Under the No Action Alternative, the Project corridor would remain in its current state for the foreseeable future, and no construction would occur.

Environmental Effects

SMART, in cooperation with the FTA, prepared an EA to evaluate the Project pursuant to the requirements of NEPA, as codified in 23 CFR 771.119. The FTA was the federal lead agency under NEPA. The EA concluded that implementation and operation of the Project would not result in significant adverse effects that would not be mitigated. This conclusion would apply to all applicable environmental elements, including Agricultural and Forestry Resources, Air Quality, Biological Resources, Cultural and Paleontological Resources, Energy, Geology and Soils, Greenhouse Gas Emissions and Climate Change, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use, Mineral Resources, Noise and Vibration, Safety and Security, Section 4(f) Resources, Socioeconomics and Environmental Justice, Traffic and Transportation, and Visual Resources.

The EA addressed the Project's compliance with all applicable statutory, regulatory, and federal requirements, as outlined below.

Air Quality Conformity. The Project is included in the Plan Bay Area as RTP ID #240736 ["Expand and enhance the SMART commuter rail system (Phase II) by constructing a one-station extension from San Rafael to Larkspur..."]. Therefore, the Project is as described in the current applicable RTP and Transportation Improvement Plan (TIP). The design concept and scope are consistent with the description in the Plan Bay Area, TIP, and the assumptions in the Metropolitan Transportation Commission's regional emissions analysis. Therefore, the Project

would conform to the State Implementation Plan, and no adverse regional air quality impact would occur as a result of the implementation of the Project.

National Historic Preservation Act Compliance. In accordance with Section 106 of the National Historic Preservation Act, an area of potential effect (APE) was delineated around the Project area, to encompass potential direct and indirect effects on cultural resources that could occur from implementation of the Project. Two APEs, one for archaeological resources and another for historic and architectural resources, were delineated. In coordination with FTA, the State Historic Preservation Office (SHPO) approved both APEs on May 22, 2013. Required records searches and surveys were taken for both APEs, and reports were prepared and submitted to SHPO with a request for concurrence of a Finding of No Effect. SHPO concurred with the request that the Project would result in no historic properties affected on May 14, 2014. A copy of the SHPO concurrence letter is included with this FONSI as Attachment 1.

Section 4(f) Compliance. As discussed in Section 3.15.3 of the EA, there are no qualifying Section 4(f) properties in the Project area. The SMART Non-Motorized Pathway (NMP) lies adjacent to the Project alignment from Andersen Drive southwards to the Larkspur Station location. This portion of the NMP is known locally as the Cal Park Hill Pathway.

Because the NMP was built before operation of the Project and has been reserved as a transportation facility, it is not subject to Section 4(f), pursuant to 23 CFR 774.11(i), which provides that Section 4(f) does not apply when a park or recreational area and a transportation facility are jointly planned. Furthermore, the NMP is a transportation facility and is therefore exempt from evaluation as a Section 4(f) property. This determination is in accordance with exemptions found in 23 CFR 774.13(f), which provides an exception for “Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation [23 CFR 774.13(f)(4)]” and further documented in SMART’s November 30, 2014 letter to FTA regarding the applicability of Section 4(f), included with this FONSI as Attachment 2.

Endangered Species Act Compliance. The U.S. Fish and Wildlife Service (USFWS) was contacted to determine whether federally listed threatened or endangered species under its jurisdiction would be likely to occur in the Project area. As discussed in the EA, a review of the list provided by USFWS and a subsequent habitat assessment found that the Project area does not contain suitable habitat for any USFWS-managed listed species. Accordingly, FTA has satisfied its consultation requirements with USFWS.

The National Marine Fisheries Service (NMFS) was contacted on April 11, 2013, to determine if federally listed threatened or endangered species under its jurisdiction, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, would be likely to occur in the Project area. NMFS responded by e-mail on April 18, 2014, and noted that the following listed species and habitats could occur: 1) Distinct Population Segment of North American Green Sturgeon; and 2) Essential Fish Habitat (EFH) for Pacific Groundfish and Coastal Pelagic fish species. Accordingly, in coordination with FTA, SMART prepared a Biological Assessment (BA) for the Project area that considered the likelihood of occurrence for green sturgeon and EFH, and the potential effects that could occur from implementation of the Project. The findings

of the BA by FTA are discussed in Section 3.2 of the EA. The BA and FTA findings that the Project would be not likely to adversely affect listed species and designated critical habitats were provided to NMFS on November 13, 2014, for its review, together with a request that NMFS concur with the findings. NMFS concurred with FTA's findings in the BA by letter dated April 7, 2015. A copy of the NMFS concurrence letter is included with this FONSI as Attachment 3.

Executive Order 12898 (Environmental Justice) Compliance. The potential for disproportionate adverse effects on minority and low income populations were evaluated in the EA in accordance with Executive Order 12898 and FTA's 2012 Environmental Justice Circular 4703.1. The Project was found to have adverse effects on Environmental Justice communities from train-mounted horn noise near the Project rail alignment's at-grade crossing of Andersen Drive. The Andersen Drive crossing is the only location along the Project alignment where residences are located closer than 375 feet threshold per FTA guidelines (see Section 3.10 of the EA). At or near the Andersen Drive crossing, potentially severe noise impacts were identified for a number of residences at the San Rafael RV Park nearest the rail alignment, and potentially moderate noise impacts were identified for a number of residences approximately 200 feet from the alignment along Woodland Avenue. Mitigation measures were identified that would reduce the adverse effects of train horn noise at those locations: 1) designation of the area as a Federal Railroad Administration-designated Quiet Zone, or, if Quiet Zone designation is not obtained; 2) installation of wayside horns at the Andersen Drive crossing. Implementation of one or the other of these measures would eliminate the moderate and severe impacts associated with train-mounted horn noise. With implementation of the identified mitigation measures, these adverse effects within the Project area would not be adverse. Therefore, the Project would not create a disproportionate adverse effect, after mitigation, to Environmental Justice communities in the Project area.

Measures to Mitigate and Minimize the Adverse Effects of the Project

SMART prepared an Environmental Impact Report (EIR) for the locally-funded SMART project in 2006 per the requirements of CEQA. The EIR prescribed mitigation measures that would be implemented during construction and operation. These measures have been incorporated into SMART's construction and operation protocols and, where applicable, have been incorporated into the Project to mitigate any potential effects.

Additional measures specific to the Project have also been incorporated. For biological resources, these additional measures include activities to minimize effects to sensitive fish species and habitats. For noise, the additional measures include minimization or elimination of train horn noise at the Andersen Drive crossing utilizing either a Quiet Zone exemption at the crossing (if granted to the City of San Rafael via the City's application with the Federal Railroad Administration) or through use of wayside horns at the crossing if the City's Quiet Zone application is not approved. For traffic impacts during construction, SMART will develop a construction implementation and phasing plan in coordination with the Cities of San Rafael and Larkspur to lessen effects to traffic. All mitigation measures, including applicable measures prescribed in the 2006 EIR and additional measures specific to the Project, are included in Table S-4 of the EA. All of the listed measures would apply to the Project.

SMART entered into a memorandum of understanding (MOU) with the Golden Gate Bridge and Highway District in 2005 for the purpose of coordinating improvements at the San Rafael Transit Center and the Larkspur Station area (see Attachment 4 included with this FONSI).

Public Review

The EA was circulated for public review in accordance with the requirements specified in 23 CFR 771.119. The Notice of Availability (NOA) was posted in the Marin Independent Journal and the Sonoma Press Democrat at the beginning of the public comment period. The NOA was sent to the federal, state, and local agencies listed in Section 5.5.2 of the EA, as well as additional agencies that requested it following the EA’s public release. Information on the Project, as well as the EA, was posted on the SMART website. Copies of the EA were made available for public review at area libraries. The public comment period began on December 19, 2014, and was originally scheduled for a duration of 33 calendar days. The comment period was extended an additional 14 calendar days and concluded on February 5, 2015.

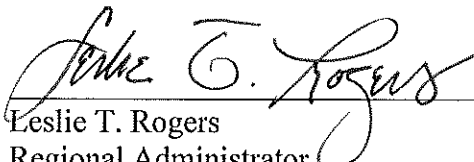
Comments Received on the EA

A total of 46 comment letters or emails were received during the public comment period. These comments are reproduced and responded to in the Addendum to the EA, which also contains corrections and additions to the EA as a result of the comments. The Addendum functions as an errata to the EA and incorporates the December 2014 EA by reference, pursuant to NEPA.

Environmental Findings

FTA finds, on the basis of the analysis, reviews, concurrence letters from applicable resource agencies, and mitigation measures described above, that there are no significant impacts to the environment associated with the construction and operation of Alternative 2, the Downtown San Rafael to Larkspur Extension. In accordance with 23 CFR Part 771.121(a), FTA determines that the elements of this project and its environmental impacts have been adequately identified and assessed, and FTA issues this Finding of No Significant Impact, which by reference incorporates all findings and mitigation found within the EA and the Addendum to the EA for the Project.

Notice of this FONSI will be made available to the affected units of federal, state, and local governments, and shall be made available to members of the public upon request, as prescribed in 23 CFR 771.121(b).



Leslie T. Rogers
Regional Administrator
FTA Region IX

MAY 20 2015

Date

- Attachment 1: May 14, 2014 SHPO Concurrence
- Attachment 2: Section 4(f) Applicability Determination
- Attachment 3: April 7, 2015 NMFS Concurrence
- Attachment 4: 2005 SMART and GGBHTD MOU

ATTACHMENT 1

May 14, 2014 SHPO Concurrence

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

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calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



May 14, 2014

Reply To: FTA_2013_0418_001

Hamid Shamsapour, P.E.
Project Manager, SMART
5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954

Re: Section 106 Consultation for the Sonoma-Marin Area Rail Transit (SMART) Project,
Downtown San Rafael to Larkspur Segment, Marin County, CA

Dear Mr. Shamsapour:

Thank you for your letter of April 24, 2013 continuing consultation, on behalf of the Federal Transit Administration, for the above referenced undertaking in order to comply with Section 106 of the National Historic Preservation Act of 1966 and its implementing regulation at 36 CFR Part 800. SMART is requesting that I concur with the determination of no historic properties affected.

As I presently understand it, the undertaking is a passenger train and multi-use pathway project that will provide rail service along 70 miles of the Northwestern Pacific Railroad alignment. The current undertaking pertains to the two-mile extension from Downtown San Rafael to Larkspur, California. My office was previously consulted on the Area of Potential Effect (APE) for the project in July, 2013.

Included with your letter were the *Draft Cultural Resources Inventory and Evaluation Report for the Sonoma Marin Area Rapid Transit (SMART), Larkspur to San Rafael* and the *Historic Architectural Survey Report for the Sonoma-Marin Area Rail Transit (SMART) Rail Corridor San Rafael to Larkspur Project, Marin County, California*, both prepared by AECOM for SMART. Neither report identified any historic properties within the APE for the project.

Based on these reports, SMART has determined that the project will result in no historic properties affected. I concur with this determination.

I look forward to continuing consultation on this project with SMART and the FTA. Thank you for considering historic properties in your planning process. If you have any questions, please contact Kathleen Forrest of my staff at (916) 445-7022 or e-mail at kathleen.forrest@parks.ca.gov.

Sincerely,

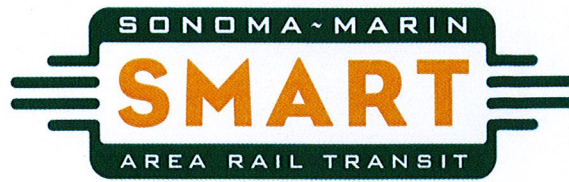
A handwritten signature in black ink that reads "Carol Roland-Nawi, Ph.D.".

Carol Roland-Nawi, Ph.D.
State Historic Preservation Officer

Cc: Leslie Rogers, FTA

ATTACHMENT 2

Section 4(f) Applicability Determination



November 30, 2014

Judy Arnold, Chair
Marin County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Jim Eddie
Golden Gate Bridge,
Highway/Transportation District

Debora Fudge
Sonoma County Mayors and
Councilmembers Association

Madeline Kellner
Transportation Authority of Marin

Jake Mackenzie
Sonoma Mayors and Councilmembers
Association

Stephanie Moulton-Peters
Marin Council of Mayors and
Councilmembers

Gary Phillips
Transportation Authority of Marin

David Rabbitt
Sonoma County Board of Supervisors

Carol Russell
Sonoma Mayors and Councilmembers
Association

Kathrin Sears
Marin County Board of Supervisors

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

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Mr. Leslie Rogers
Regional Administrator
FTA Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105-1839

RE: SMART Non-Motorized Pathway Transportation Facility

Dear Mr. Rogers,

This letter addresses the applicability of Section 4(f) of the Department of Transportation Act as it relates to the SMART Non-Motorized Pathway (NMP) that is adjacent to the 2.1 mile SMART Downtown San Rafael to Larkspur Extension project. The NMP was planned and built before the operation of the Larkspur Extension project and it is entirely within the SMART owned right-of-way, which has been reserved as a transportation facility since it was deeded to the Golden Gate Bridge, Highway, and Transportation District (GGBHTD) in segments starting in 1983.

History and Ownership of the Northwestern Pacific Right-of-Way and the NMP for Transportation Purposes

The acquisition of the Northwestern Pacific Railroad (NWP) right-of-way by the GGBHTD was the result of the 1969 California Legislature's direction to the GGBHTD to prepare a transportation facilities plan. A key recommendation of that 1971 plan was the acquisition of any portion of the NWP right-of-way that might be in danger of being pre-empted for non-transportation uses. Acquisitions continued along the NWP corridor by the GGBHTD and other public agencies and in 1995 a Joint Powers Authority (JPA) comprised of the GGBHTD, Marin County and the North Coast Railroad Authority (NCRA), collectively the Northwestern Pacific Railroad Authority (NWPRA), was formed to hold title to the right-of-way until such time as a successor agency was created to operate rail services on the corridor.

The SMART District was created by the California Legislature in 2002 (AB2224 Nation). With the creation of SMART, work began on the dissolution of the NWPRA. That Dissolution Agreement (attached) specified that the JPA was created to provide for the acquisition and management of the Northwestern Pacific Right of Way "for future public transportation and freight use". The Dissolution Agreement also referenced the 2003 Memorandum of Understanding between the NWPRA and SMART regarding the transfer of the right-of-way assets to SMART, a transfer that was completed in 2006.

SMART is governed by the California Public Utilities Code (Part 16, Sections 105000-105337). Section 105003 provides definitions used within Part 16 and includes "(c) *Rail transit works or rail transit facilities* means any or all real and personal property, equipment, rights or interests owned or to be acquired by the district for rail transit service purposes, including ancillary bicycle and pedestrian pathways that provide connections between and access to station sites."

Local jurisdiction planning documents, including the General Plans and Bicycle and Pedestrian Plans have referenced the right-of-way as both a rail facility and, since the 1970s, as the "Marin County North-South Bikeway", with variations on that proposed project name. The NMP was established to be a transportation facility. While some documents over time have spoken to the recreation users who will access the pathway, the primary function of the facility has always been as a transportation facility.

Utilizing Regional Bridge Tolls and federal Congestion Mitigation and Air Quality (CMAQ) funds, a consortium of parties, including SMART, succeeded in constructing the existing segment of the NMP (the Cal Park Hill Tunnel and Path Project) in 2011. That project consisted of both the pathway component, and also a reconstruction of the tunnel to rail service standards and a reservation of the necessary right-of-way for the future passenger rail facilities. The NMP was developed consistent with local plans and with CMAQ funds for the purposes of traffic congestion relief with the added benefit of being a multi-use trail.

Until SMART commences revenue rail services associated with the Larkspur Extension project, an MOU among Marin County, the Cities of San Rafael and Larkspur, and the Twin Cities Police Authority governs the operations and maintenance of the NMP. Per 23 CFR 774.17, SMART is the *official with jurisdiction* for the NMP facility, in that SMART is “the agency that own[s] or administer[s] the property in question and who [is] empowered to represent the agency on matters related to the property.”

Applicability of Section 4(f)

Because the NMP was built before operation of the Larkspur Extension project and has been reserved as a transportation facility, it is not subject to Section 4(f), pursuant to 23 CFR 774.11(i), which provides that Section 4(f) does not apply when a park or recreational area and a transportation facility are jointly planned. Examples of such concurrent or joint planning or development include, but are not limited to:

- Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or
- Designation, donation, planning, or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

In the current instance, SMART as the owner of the future transportation facility and the official with jurisdiction for the NMP facility, the first example is relevant.

Exceptions under 4(f)

In addition to the above discussion which explains that Section 4(f) is not applicable, SMART also notes that the provisions of 23 CFR 774.13, regarding exceptions to Section 4(f), is also relevant. The SMART owned ROW has been reserved as a transportation facility since the original railroad construction starting in the 1860s. In general, certain trails/paths that are part of the local transportation system and function primarily for transportation may be considered exceptions from Section 4(f) requirements, pursuant to 23 CFR 774.13(f)(4).

The primary function of the NMP is as a transportation facility. During construction and operation of the Larkspur Extension project, there would be continual operation of the NMP with no changes in access and the NMP would remain a contiguous pathway. The Larkspur Extension project would not temporarily or permanently use any parts of the NMP for construction or operations activities. Local General Plans and bicycle master plans designate the NMP as a transportation corridor and its construction was funded in part with federal funds intended to provide traffic congestion relief. As such, the NMP has always been regarded an integral component of the local transportation system and whose principle function has been for transportation.

Conclusion

For the reasons stated above the NMP is not an applicable Section 4(f) property as defined in 23 CFR 774.11(i) and because it was established to be used primarily for a transportation facility, it is not subject to Section 4(f) per 23 CFR 771.13(f)(4), which provides an exception for “Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation [23 CFR 13(f)(4)].”

Please let us know if there is further clarification we can provide.

Sincerely,


Farhad Mansourian
General Manager

**DISSOLUTION AGREEMENT
BETWEEN THE GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION
DISTRICT, THE COUNTY OF MARIN AND THE NORTH COAST RAILROAD
AUTHORITY**

This Dissolution Agreement ("Agreement") is entered into this 27th day of February, 2004 by and between the Golden Gate Bridge, Highway and Transportation District, a public agency ("GGB"), the County of Marin, a public agency ("County"), and the North Coast Railroad Authority ("NCRA").

RECITALS

A. GGB, County and NCRA entered into that certain Joint Powers Agreement dated May 24, 1995 ("JPA"), establishing the Northwestern Pacific Railroad Authority, a joint powers authority ("NWPRRA"), pursuant to Chapter 5 of Division 7 of Title 1 of the California Government Code (Section 6500, et seq.) to provide for the acquisition, maintenance, management and operation of the Healdsburg and Willits Segments of the Northwestern Pacific Right of Way for future public transportation and freight use.

B. Pursuant to a Memorandum of Understanding dated June 13, 2003 (the "MOU"), by and between the NWPRRA and the Sonoma Marin Area Rail Transit District, a public agency created under California law ("SMART"), NWPRRA agreed to transfer substantially all of its assets, as more particularly described in the MOU, to SMART.

C. Subject to completion of the proposed asset transfer to SMART, the parties desire to terminate the JPA and dissolve the NWPRRA. The parties hereto now desire to enter into this Agreement to (i) authorize and consent to the termination of the JPA and the dissolution of the NWPRRA, (ii) appoint GGB as the member agency authorized to wind up the affairs of the NWPRRA, and (iii) provide for the distribution of NWPRRA assets not distributed pursuant to the MOU.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

ARTICLE I

TERMINATION OF THE JPA AND DISSOLUTION OF THE NWPRRA

1.1 Dissolution of the NWPRRA. The parties agree to dissolve the NWPRRA effective as of the date of closing of the transfer of NWPRRA's assets to SMART pursuant to the MOU ("Effective Date"). In the event NWPRRA's assets, other than those amounts reserved hereunder, are not transferred to SMART by the Effective Date, the Effective Date shall be extended until such date as the transfer of assets to SMART is complete. From and after the date of this Agreement, the parties shall endeavor to complete all unfinished business and liquidate the

affairs of the NWPRA. Except as deemed necessary to (i) complete the transfer of substantially all assets from NWPRA to SMART; (2) complete the winding up of unfinished business; or (3) carry out liquidating of the affairs of the NWPRA, none of the parties hereto shall do any further business or incur any further obligations on the part of the NWPRA after the Effective Date set forth in this Section.

1.2 Termination of the JPA. Pursuant to Section 21 of the JPA, the parties agree to terminate the JPA as of the Effective Date.

ARTICLE II

APPOINTMENT OF GGB AS DISSOLVING MEMBER

2.1 The parties appoint GGB as the sole "Dissolving Member" of the NWPRA. The Dissolving Member is authorized to wind up the affairs of the NWPRA, and in this regard, to:

(a) pay all known debts and liabilities and the costs and expenses of winding up and dissolution;

(b) establish and administer a reasonable reserve of funds to pay any remaining and final debts and liabilities of the NWPRA (e.g. audit costs, agency management fees) (the "Reserve");

(c) distribute the balance remaining from such Reserve to SMART on or before June 30, 2004, provided that GGB may extend such date if GGB determines, in its reasonable discretion, that such distribution should be delayed pending the resolution of an unresolved claim or action;

(d) arrange for the preparation of a final audit report, showing cumulative collections, disbursements and distributions, which will be submitted upon completion of the dissolution to all member agencies;

(e) cause a Statement of Facts – Roster of Public Agencies Filing to be filed in the office of the California Secretary of State; and

(f) perform any and all other actions which GGB determines, in its reasonable discretion, are necessary or appropriate to wind up the affairs of the NWPRA and complete the dissolution process.

ARTICLE III

RELEASE

3.1 Release. Upon the Effective Date, the parties to this Agreement hereby release and discharge each other, each of their respective assigns and successors and each of their directors, officers, employees and agents, from any and all claims, actions, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses (including, without limitation, court costs and attorneys' fees), damages, and causes of action of whatever kind or

nature, whether known or unknown, suspected or unsuspected, whether arising, or accruing before or after the Effective Date, based on, arising out of, or in connection with (a) the operation of the NWPRA since its inception, including, without limitation, the ownership, management, development and disposition of its assets, and (b) the breach of any representation, warranty or covenant in the JPA or the Cooperative Agreement by and between NCRA and NWPRA dated April 30, 1996, and all matters directly or indirectly claimed or alleged between the parties in connection therewith or in any way related thereto. The parties agree and acknowledge that this release applies to both known and unknown claims and agree to waive the benefits of California Civil Code §1542, which states as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

The parties agree and represent that they may hereafter discover facts different from or in addition to those they now know or believe to be true in respect to the claims, demands, debts, liabilities, accounts, actions or causes of action herein released, and hereby agree that these releases shall be and remain in effect in all respects as complete, general and full releases as to the matters released, notwithstanding any such different or additional facts.

ARTICLE IV

DISPUTE RESOLUTION

4.1 Dispute Resolution. Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement, which cannot be resolved by the parties shall be submitted to mediation in the County of Marin, California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until such time as the matter is either resolved or the mediator finds or the parties agree that mediation should not continue. If the parties cannot resolve the controversy, claim or dispute through the mediation process described above, the matter shall be settled by arbitration in the County of Marin, California, administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All direct costs and expenses of each party other than those for payment of the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party that incurs such expenses. In the event either party brings suit to enforce any judgment rendered in arbitration, the prevailing party in such proceeding shall be entitled to the costs, including, but not limited, legal fees, incurred by it during the enforcement proceeding.

ARTICLE V

MISCELLANEOUS

5.1 Assignment. Neither party shall assign this Agreement to any other person or entity, in whole or in part, without the express written consent of the other party, which shall not be unreasonably withheld.

5.2 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

5.3 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or (i) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

if to GGB:

Golden Gate Bridge, Highway and
Transportation District
Box 9000 Presidio Station
San Francisco, CA 94129-0601
Attn: Celia Cupersmith

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attention: David J. Miller, Esq.

if to County:

The County of Marin
Marin County Civic Center
San Rafael, CA 94903
Attention: Steve Kinsey

with a copy to:

Patrick Faulkner, Esq.
County Counsel of Marin
Civic Center, Suite 342
San Rafael, CA 94903

if to NCRA:

The North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482
Attention: John Woolley

with a copy to:

Christopher Neary, Esq.
110 South Main Street, Suite C
Willits, CA 95490

5.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

5.5 Amendment. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

5.6 Timeliness. NWPRA and SMART hereby acknowledge and agree that time is of the essence with respect to each and every term, condition, obligation and provision hereof.

5.7 Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including mediation or arbitration, brought by any party in which this Agreement is subject, shall be brought in the County of Marin or Sonoma, California.

5.8 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

5.9 Invalidity. Any provision of this Agreement which is invalid, void, or illegal, shall not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement shall remain in full force and effect.

5.10 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

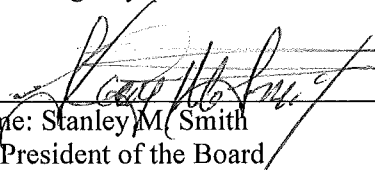
5.11 Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

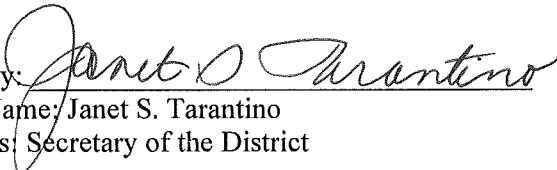
5.12 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

5.13 Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.


IN WITNESS WHEREOF, the parties have entered into this Agreement with the intent to be legally bound.


THE GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT, a public agency

By: 
Name: Stanley M. Smith
Its: President of the Board

By: 
Name: Janet S. Tarantino
Its: Secretary of the District

THE GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT, a public agency

By: 
Name: Celia Kupersmith
Its: General Manager

APPROVED AS TO FORM

Attorney

THE COUNTY OF MARIN, a public agency

By: _____
Name: Steve Kinsey
Its: President, Board of Supervisors

APPROVED AS TO FORM

Attorney

THE NORTH COAST RAILROAD AUTHORITY

By: _____
Name: John Woolley
Its: Chairman

APPROVED AS TO FORM

Attorney

IN WITNESS WHEREOF, the parties have entered into this Agreement with the intent to be legally bound.

THE GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT, a public agency

By: Celia Kupersmith
Name: Celia Kupersmith
Its: General Manager

APPROVED AS TO FORM

Attorney

THE COUNTY OF MARIN, a public agency

By: Steve Kinsey
Name: Steve Kinsey
Its: President, Board of Supervisors

APPROVED AS TO FORM

Attorney

THE NORTH COAST RAILROAD AUTHORITY

By: _____
Name: John Woolley
Its: Chairman

APPROVED AS TO FORM

Byron R. Jones
Attorney

IN WITNESS WHEREOF, the parties have entered into this Agreement with the intent to be legally bound.

THE GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT, a public agency

By: _____
Name: Celia Kupersmith
Its: General Manager

APPROVED AS TO FORM

Attorney

THE COUNTY OF MARIN, a public agency

By: _____
Name: Steve Kinsey
Its: President, Board of Supervisors

APPROVED AS TO FORM



Attorney

THE NORTH COAST RAILROAD AUTHORITY

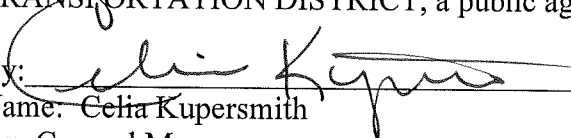
By: _____
Name: John Woolley
Its: Chairman

APPROVED AS TO FORM

Attorney

IN WITNESS WHEREOF, the parties have entered into this Agreement with the intent to be legally bound.

THE GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT, a public agency

By: 
Name: Celia Kupersmith
Its: General Manager

APPROVED AS TO FORM

Attorney

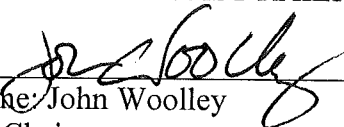
THE COUNTY OF MARIN, a public agency

By: _____
Name: Steve Kinsey
Its: President, Board of Supervisors

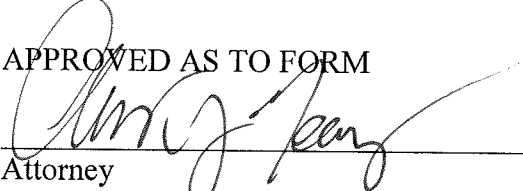
APPROVED AS TO FORM

Attorney

THE NORTH COAST RAILROAD AUTHORITY

By: 
Name: John Woolley
Its: Chairman

APPROVED AS TO FORM



Attorney

ATTACHMENT 3

April 7, 2015 NMFS Concurrence



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-4731

April 7, 2015

Refer to NMFS No: WCR-2014-1744



Leslie T. Rogers
Regional Administrator, Region IX
U.S. Department of Transportation
Federal Transit Administration
201 Mission Street, Suite 1650
San Francisco, California 94105-1839

Re: Endangered Species Act Section 7(a)(2) concurrence letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat response for the proposed Sonoma-Marine Area Rail Transit Downtown to Larkspur Extension, Marin County

Dear Mr. Rogers:

On November 24, 2014, NOAA's National Marine Fisheries Service (NMFS) received your request for a written concurrence that the U.S. Department of Transportation, Federal Transit Administration's (FTA) proposed partial funding of the Sonoma-Marine Area Rail Transit (SMART) Downtown San Rafael to Larkspur Extension, Marin County is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence.

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for us of the ESA consultation process to complete EFH consultation. In this case, NMFS concluded the action would not adversely affect EFH. Thus, consultation under the MSA is not required for this action.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through NMFS' Public Consultation Tracking System [<https://pcts.nmfs.noaa.gov/pcts-web/homepage.pcts>].¹ A complete record of this consultation is on file at the NMFS North-Central Coast Office in Santa Rosa, California.

¹ Once on the PCTS homepage, use the following PCTS tracking number within the Quick Search column: WCR-2014-1744.



2011-10967

Proposed Action and Action Area

SMART proposes to rehabilitate existing railroad track, replace three trestles, install a new retaining wall along a portion of the alignment, and add a new signal system and other safety-related communication improvements between the cities of San Rafael and Larkspur in Marin County, California. The only component of the proposed action that may affect listed species or critical habitat consists of replacement of the trestle crossing San Rafael Creek. The general construction sequence for the trestle replacement over San Rafael Creek includes: removal of the existing deck and tracking, installation of small cofferdams around each existing in-water pile, removal of the piles, removal of the cofferdams, demolition of the existing support structures, driving land-based piles, construction of the new trestle and abutments, and then installation of track atop the new trestle. Construction of the new abutments and trestle, including pile driving, will not require any in-water work. All new piles will be driven using a vibrating hammer.

For demolition of the existing trestle crossing San Rafael Creek, SMART will place small cofferdams around the existing piles. The cofferdams will be small enough not to disrupt the flow of the water in San Rafael Creek through the site. All existing piles will be removed to a depth of 3 feet below the channel bottom. The new trestle will span the existing waterways and new abutments will be placed outside the waterways. SMART will stage construction equipment and materials adjacent to the SMART's right-of-way outside of delineated wetlands. SMART proposes to implement several best management practices, including silt fences and a spill-prevention plan to avoid effects to waterways associated with construction. Construction for this project is expected to take about one year. All in-water work will be limited to the period between July 1 and November 30.

There are no interrelated or interdependent activities associated with the proposed project.

The action area for this project includes the stream channel and riparian areas on San Rafael Creek. New trestle construction activities are expected to affect areas in San Rafael Creek up to 100 feet both upstream and downstream of the existing rail line crossing. The San Rafael Creek watershed is small (approximately 11 square miles) and heavily urbanized. The stream corridor consist of short stretches of open stream channel, underground culverts and trapezoidal open channels. San Rafael Creek does not support any run of anadromous fish; however, the project site is tidally-influenced from San Pablo Bay where listed anadromous salmonids and green sturgeon are known to occur.

Action Agency's Effects Determination

The FTA determined the proposed project is not likely to adversely affect (NLAA) listed fish species and their designated critical habitat. The FTA determined that the proposed action is not likely to adversely affect listed fish species and their critical habitats because: 1) presence of the listed species at the work sites is unlikely during the proposed construction window, and 2) the applicant will use containment systems to avoid or minimize disturbance to aquatic habitat.

Available information indicates the following listed species (Distinct Population Segments [DPS]) and critical habitat under the jurisdiction of NMFS may be affected by the proposed project:

- Sacramento River winter-run Chinook salmon** (*Oncorhynchus tshawytscha*) **ESU**
 Endangered (70 FR 37160; June 28, 2005)
 Critical habitat (58 FR 33212; June 16, 1993);
- Central Valley spring-run Chinook salmon** (*Oncorhynchus tshawytscha*) **ESU**
 Threatened (70 FR 37160; June 28, 2005);
- Central Valley steelhead** (*Oncorhynchus mykiss*) **DPS**
 Threatened (71 FR 834; January 5, 2006);
- Central California Coast steelhead** (*Oncorhynchus mykiss*) **DPS**
 Threatened (71 FR 834; January 5, 2006)
 Critical habitat (70 FR 52488; September 2, 2005); and
- North American Green Sturgeon southern DPS** (*Acipenser medirostris*)
 Threatened (71 FR 17757; April 7, 2006)
 Critical habitat (74 FR 52300; October 9, 2009).

The life history of steelhead is summarized in Busby *et al.* (1996) and Chinook salmon life history is summarized in Myers *et al.* (1998). Central California Coast (CCC) steelhead and Central Valley (CV) listed anadromous salmonids (Sacramento River winter-run Chinook salmon, CV spring-run Chinook salmon, and CV steelhead) use San Pablo Bay adjacent to the project site primarily as a migration corridor en route to the Pacific Ocean to rear as juveniles or to upstream areas to spawn as adults. Adult steelhead and adult winter-run Chinook salmon typically begin their migrations through San Pablo Bay in early December. Adult spring-run Chinook salmon migrate through San Francisco Bay during the spring months. Juvenile steelhead and Chinook salmon migrate through San Pablo Bay during the late winter and spring months.

The life history of green sturgeon in California is summarized in Adams *et al.* (2002) and NMFS (2005). The southern DPS of North American green sturgeon spawn in the deep turbulent sections of the upper reaches of the Sacramento River. As juvenile green sturgeon age, they migrate downstream and live in the lower delta and bays, spending from three to four years there before entering the ocean. Adult green sturgeon return from the ocean every few years to spawn, and generally show fidelity to their upper Sacramento River spawning sites. Adult and juvenile green sturgeon may be present in the lower Napa River and project action area year-round.

Consultation History

By letter dated November 17, 2014, the FTA initiated informal consultation with NMFS and provided the biological assessment and other information.

Effects of the Action

Under the ESA, “effects of the action” means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard for finding that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the anticipated effects of the action be discountable, insignificant, or completely beneficial. Discountable effects are those extremely unlikely to occur. Insignificant effects relate to the size of

the impact and should never reach the scale where take occurs. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat.

The effects of the proposed action are reasonably likely to include temporary degradation of water quality during construction; entrapment of fish within the cofferdams, elevated underwater sound levels associated with pile driving by vibratory hammer, and disturbance of benthic habitat. Construction activities are scheduled to occur between July 1 and November 30. Because of the included in-water work schedule, CCC steelhead and listed CV anadromous salmonids are very unlikely to be present in the project's action area when in-water construction is occurring. Thus, NMFS anticipates CCC steelhead and CV anadromous salmonids will not encounter these effects and impacts are expected to be temporary and to fully dissipate when construction activities cease. Based on the above, any construction-related effects to CCC steelhead and listed CV anadromous salmonids are anticipated to be discountable.

Adult and juvenile green sturgeon may be present in tidal portions of San Pablo Bay year-round. San Rafael Creek at the crossing is tidal and accessible to green sturgeon. However, the stream channel at that location is small, shallow, and has degraded habitat conditions. During low tide, aquatic habitat conditions are too shallow and unsuitable for green sturgeon, likely precluding green sturgeon presence within the areas to be dewatered for cofferdam construction. NMFS expects that green sturgeon presence is discountable in the action area. In consideration of the project's proposed construction work window, the life history of anadromous salmonids and green sturgeon, and avoidance measures proposed by the applicant, NMFS does not expect that listed anadromous salmonids or green sturgeon will be present during work activities. Therefore, effects to listed fish associated with temporary and localized impacts from the proposed action (*e.g.*, sediment generation or increase underwater sound levels) are discountable.

The action area at the San Rafael Creek crossing is in the tidal portion of that stream and is designated critical habitat for Sacramento River winter-run Chinook salmon, CCC steelhead, and green sturgeon. The physical and biological features essential for the conservation of Sacramento River winter-run Chinook salmon are: (1) access from the Pacific Ocean to appropriate areas in the upper Sacramento river, (2) availability of clean gravel for spawning substrate, (3) adequate river flows for spawning, incubation of eggs, fry development and emergence, and downstream transport of juveniles, (4) water temperatures between 42.5 and 57.5 °F (5.8 and 14.1 °C) for successful spawning, egg incubation, and fry development, (5) habitat areas and adequate prey that are not contaminated, (6) riparian habitat that provides for successful juvenile development and survival, and (7) access downstream so that juveniles can migrate from spawning grounds to San Francisco Bay and the Pacific Ocean. Primary constituent elements (PCEs) of designated critical habitat for CCC steelhead include: estuarine areas free of obstruction, water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater; natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels; and juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation. PCEs for green sturgeon critical habitat in estuarine areas include: food resources, water flow, water quality, migratory corridor, water depth, and sediment quality. PCEs contain physical and biological features that are essential to the conservation of the species.

The existing condition of fish habitat in the project area has been influenced by a long history of human disturbance, including transportation development, channel maintenance and flood control actions, and industrial and suburban development. San Rafael Creek in the action area has been channelized with hardened streambanks. The riparian corridor is virtually absent and instream structure lacking. All of these factors degrade aquatic habitat and limit the quality of critical habitat for listed species in the action area. The existing condition of PCEs in the action area is degraded.

During project activities, critical habitat will be temporarily affected by potential effects to water quality and the benthic community. Water quality may be affected during trestle demolition or construction. SMART has proposed sediment control devices, such as cofferdams and silt fences, to avoid or minimize these potential effects to water quality. The minor and localized elevated levels of turbidity associated with this project's construction activities are expected to be contained to areas within the cofferdams and when the cofferdams are removed turbidity is expected to quickly disperse from the project area with tidal circulation. Demolition and construction debris from this project can be a source of water pollution that can introduce toxic materials to the aquatic habitat. SMART proposes to stockpile debris and construction materials away from San Rafael Creek and to protect the stockpile from rain and wind erosion. NMFS expects these proposed containment measures will effectively prevent construction debris from becoming a source of water pollution.

A portion of the proposed action will provide a benefit to designated critical habitat in the action area by removing creosote-treated piles and ties of the existing trestle. Creosote, a distillate of coal tar, is a complex chemical mixture, up to 80 percent of which is comprised of polycyclic aromatic hydrocarbons – a chemical compound acutely toxic to aquatic life. Removal of existing creosote pilings and ties will improve water quality in the project area by removing this on-going source of leaching contaminants. The proposed project's new pilings are located outside the active stream channel and will not leach contaminants into the waters of San Rafael Creek.

Benthic aquatic macroinvertebrates within the project site may be killed or their abundance reduced (Cushman 1985) when a portion of San Rafael Creek is dewatered. However, effects to aquatic macroinvertebrates resulting from dewatering will be limited to a small area immediately adjacent to the existing creosote treated pilings. Impacts to the benthic community are expected to be minor following rewatering because construction activities will be relatively short-lived and recolonization of disturbed areas by macroinvertebrates is expected to occur within about two months (Cushman 1985, Thomas 1985, Harvey 1986). Although a temporary loss of benthic invertebrates is anticipated, the effects on the forage prey base for Sacramento River winter-run Chinook salmon, CCC steelhead, and green sturgeon are expected to be insignificant because the project's location within a highly modified channel is marginally suitable for listed fish and their occurrence is unlikely in the action area. NMFS expects that any effects on designated critical habitat associated with changes to water quality conditions and the loss of benthic macroinvertebrates as a result of project construction activities will be insignificant.

Conclusion

Based on the foregoing analysis, NMFS concurs with the FTA that the proposed action is not likely to adversely affect the subject listed species and designated critical habitats.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the FTA or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

Please direct questions regarding this letter to Daniel Logan, North-Central Coast Office, San Francisco Bay Branch, at (707) 575-6053 or dan.logan@noaa.gov.

Sincerely,

for Gary Stern

William W. Stelle, Jr.
Regional Administrator

cc: Brenda Perez, Federal Transportation Authority, Region IX, San Francisco
Bryan Matsumoto, Corps, San Francisco
✓ Bill Gamlen, SMART, Petaluma
Joseph Terry, US Fish and Wildlife Service, Sacramento
Tim Dodson, California Department of Fish and Wildlife, Yountville
Xavier Fernandez, San Francisco Bay Regional Water Quality Control Board, Oakland
Copy to ARN File # 151422SWR2011SR00556
Copy to Chron File

References Cited

- Adams, P.B., C.B. Grimes, J.E. Hightower, S.T. Lindley, and M.L. Moser. 2002. Status Review for North American Green Sturgeon, *Acipenser medirostris*. National Marine Fisheries Service, Southwest Fisheries Science Center. 49 pages.
- Busby, P.J., T.C. Wainwright, G.J. Bryant, L. Lierheimer, R.S. Waples, F.W. Waknitz, and I.V. Lagomarsino. 1996. Status review of West Coast steelhead from Washington, Idaho, Oregon and California. United States Department of Commerce, National Oceanic and Atmospheric Administration Technical Memorandum NMFS-NWFSC-27. 261 pages.

Cushman, R.M. 1985. Review of ecological effects of rapidly varying flows downstream from hydroelectric facilities. *North American Journal of Fisheries Management* 5:330-339.

Harvey, B.C. 1986. Effects of suction gold dredging on fish and invertebrates in two California streams. *North American Journal of Fisheries Management* 6:401-409.

Myers, J.M., R.G. Kope, G.J. Bryant, D. Teel, L.J. Lierheimer, T.C. Wainwright, W.S. Grand, F.W. Waknitz, K. Neely, S.T. Lindley, and R.S. Waples. 1998. Status review of Chinook salmon from Washington, Idaho, Oregon, and California. United States Department of Commerce, National Oceanic and Atmospheric Administration Technical Memorandum NMFS NWFSC 35. 443 pages.

Thomas, V.G. 1985. Experimentally determined impacts of a small, suction gold dredge on a Montana stream. *North American Journal of Fisheries Management* 5:480-488.



ATTACHMENT 4

2005 SMART and GGBHTD MOU

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is entered into this 25th day of October, 2005 by and between the Golden Gate Bridge, Highway and Transportation District, a public agency ("GGB"), the County of Marin, a public agency ("County"), the Marin County Transit District, a public agency ("MCTD") and the Sonoma Marin Area Rail Transit District, a public agency ("SMART"), (collectively referred to as the "parties").

RECITALS

A. Pursuant to an Agreement of Purchase and Sale signed in 1984 by and between GGB, as Buyer, and Northwestern Pacific Railroad Company ("NWP") and One Market Street Properties, Inc., as Seller, as amended to date, and all ancillary documents thereto (collectively, the "Corte Madera Purchase Agreement"), GGB acquired a segment of the railroad right-of-way commonly known as the Corte Madera Right-of-Way from NWP MP 11.4 in the City of Corte Madera, California, to NWP MP 14.6 in the city of Larkspur, California, together with all appurtenances thereto, (collectively, the "Corte Madera ROW").

B. Pursuant to an Agreement of Purchase and Sale dated January 24, 1983 by and between GGB, County, and MCTD, as Buyer, and Northwestern Pacific Railroad Company ("NWP") and One Market Street Properties, Inc., as Seller, as amended to date, and all ancillary documents thereto (collectively, the "Larkspur Purchase Agreement"), GGB, County and MCTD acquired a segment of the railroad right-of-way commonly known as the Larkspur Right-of-Way from NWP MP 14.6 in the City of Larkspur, California, to NWP MP 15.71 in the city of San Rafael, California, together with all appurtenances thereto, (collectively, the "Larkspur ROW").

C. Pursuant to an Agreement of Purchase and Sale dated June 1, 1990 by and between GGB, as Buyer, and Southern Pacific Transportation Company ("SP"), predecessor in interest to Union Pacific Railroad Company ("UP"), and Northwestern Pacific Railroad Company ("NWP"), collectively as Seller, as amended to date, and all ancillary documents thereto (collectively, the "San Rafael Purchase Agreement"), GGB acquired a segment of the railroad right-of-way commonly known as the San Rafael Corridor Right-of-Way from NWP MP 15.71 in the City of San Rafael, California, to NWP MP 26.96 in the City of Novato, California, together with all appurtenances thereto, (collectively, the "San Rafael ROW"). The Corte Madera ROW, the Larkspur ROW, and the San Rafael ROW, are collectively referred to in this Agreement as the "ROW".

D. Pursuant to a lease dated May 13, 2002 ("Marin Sanitary Lease"), GGB, County and MCTD leased to Marin Sanitary District a portion of the San Rafael ROW along with certain adjacent property owned by GGB ("Marin Sanitary Property").

E. GGB constructed, maintains and operates in coordination with the City of San Rafael the San Rafael Transportation Center ("SRTC") across part of the San Rafael ROW and on separate property owned by GGB.

F. In December 1998, GGB acquired from the State of California, Department of Transportation, approximately 3.35 acres of unimproved real property in the vicinity of

Cloverdale, California as more particularly described in **Exhibit A** to this MOU. As part of this transaction GGB acquired certain other commitments to provide right-of-way services to acquire a spur track suitable for turning trains and to pay up to \$192,000 to help construct such a facility (collectively, the "Cloverdale Property"). These transactions were documented in a Stipulation for Judgment in Condemnation, Judgment in Condemnation and Final Order of Condemnation (collectively, the "Cloverdale Agreement").

G. GGB and the State of California, Department of Transportation, entered into an agreement ("Gap Closure Agreement") dated November 21, 2002. Pursuant to this agreement, GGB agreed to permit a relocation of a portion of the ROW in San Rafael, California to the property described in **Exhibit B** to this Agreement in connection with the construction of a high occupancy vehicle lane on State Highway 101.

H. GGB has a reserved right to acquire a four acre parcel along the ROW in Novato, California (the "Station Site") for future development as a transit station or for transit purposes, pursuant to a Cooperative Agreement entered into between GGB and the City of Novato in 1995 ("Hamilton Agreement"). The Hamilton Agreement provides that upon written demand by GGB within a 25 year period expiring in December of 2020, the City of Novato must transfer its rights, title, and interest in the Station Site to GGB.

I. SMART was created pursuant to AB 2224, Chapter 341 of the Laws of 2002, for the purpose of providing a unified, comprehensive, institutional structure for the ownership and governance of a passenger rail system within the counties of Marin and Sonoma, California. The enabling legislation for SMART is established in Section 105000 et seq. of the California Public Utilities Code.

J. Public Utilities Code Section 105012 contemplates that GGB, County and MCTD may transfer their respective rights in the Corte Madera ROW, the Larkspur ROW, and the San Rafael ROW to SMART in furtherance of SMART's statutory objectives. The parties now desire to establish the terms and conditions by which GGB, County and MCTD will transfer ownership of the ROW, all appurtenances thereto, and certain specified assets related to it.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

ARTICLE I

TRANSFER OF ASSETS

1.1 GGB/County/MCTD Assets Defined. The term "GGB/County/MCTD Assets" shall consist of the following assets:

- a. the ROW as described in **Exhibit C** to this Agreement;
- b. all interests in leases, licenses and other agreements encumbering any of the ROW (collectively, the "Leases, Licenses and Other Agreements") except as otherwise provided herein with respect to the Marin Sanitary Property;

- therewith;
- c. the Cloverdale Property and all rights and appurtenances connected therewith;
 - d. all contract rights, including all rights under the Corte Madera Purchase Agreement, the Larkspur Purchase Agreement, the San Rafael Purchase Agreement, the Cloverdale Agreement, the Hamilton Agreement, and the Gap Closure Agreement; and
 - e. all grant agreements, including GGB's responsibilities with respect to the various federal and state grant and funding agreements entered into in connection with the acquisitions of the ROW and related ownership and improvement matters.

1.2 Transfer of GGB/County/MCTD Assets. Subject to the terms and conditions of this Agreement, GGB, County and MCTD, to the extent of their respective ownership interests, hereby transfer, convey and assign to SMART all rights, title and interest in the GGB/County/MCTD Assets. All assets of GGB, County or MCTD of any kind and nature other than the GGB/County/MCTD Assets, as specifically described in this Agreement, shall be and remain the property of GGB, County or MCTD, respectively.

1.3 Transfer Consideration. SMART's full acceptance and performance of all of the terms and conditions of this Agreement, including without limitation, the protections for GGB, County and MCTD established in Sections 1.4, 1.5 and Article II below, shall be deemed full consideration for transfer of the GGB/County/MCTD Assets to SMART.

1.4 Retained Rights.

a. GGB has established the SRTC on a portion of the San Rafael ROW as well as on adjacent property separately acquired and improved by GGB. SMART and GGB acknowledge the public benefit derived from continued use of the SRTC as a vital North Bay transportation hub, and its utility in maintaining the integrity of the San Rafael ROW against loss by abandonment or non-use. Accordingly, in the Deed conveying the GGB/County/MCTD Assets to SMART, the form of which is attached hereto as **Exhibit D** ("Deed"), GGB shall retain from the San Rafael ROW a permanent easement ("SRTC Easement") for the limited purpose of operating and maintaining that portion of the SRTC located on the San Rafael ROW. The SRTC Easement shall be exclusive at all times prior to SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary for commencement of revenue service over that portion of the San Rafael ROW subject to the SRTC Easement, and shall be non-exclusive thereafter. Once the SRTC Easement becomes non-exclusive, it shall be subordinate to SMART's proposed railroad operations over that portion of the San Rafael ROW subject to it in all respects.

(i) During the period of GGB's exclusive SRTC Easement, SMART shall have the right to access the SRTC Easement to conduct property management and maintenance activities and to conduct all appropriate pre-construction related activities related to SMART's proposed rail service, including without limitation, surveying, engineering, and environmental testing activities. SMART will notify GGB of its entry on the SRTC Easement area at the earliest practicable opportunity prior to entry but in no event later than seventy-two

(72) hours prior to entry, except in the case of an emergency involving public health or safety, in which case no notice prior to entry shall be required.

(ii) During the period of GGB's exclusive SRTC Easement, GGB shall allow MCTD to use that portion of the San Rafael ROW subject to the SRTC Easement to serve its fixed route local service passengers if MCTD's contract with GGB for the operation of local fixed route local service is terminated for any reason and MCTD commences to operate local fixed route service independently either by its own forces or pursuant to a contract with a service provider. In such circumstance, MCTD's use of and service to the SRTC shall be subject to administrative and operating procedures established by GGB applicable to all service providers who are granted use of that facility.

b. The parties anticipate that the SRTC will require redesign, relocation, construction and/or reconstruction of existing or new improvements (collectively, "Improvements") to facilitate local bus, regional bus and regional railroad transportation purposes. Current plans for the Improvements developed by SMART indicate that it will be necessary for SMART to acquire a property interest from GGB in a portion of the SRTC that is not part of the San Rafael ROW. The parties shall cooperate in the design and construction of Improvements wherever located to ensure that they accommodate the provision by SMART, GGB, MCTD and other public transportation providers of their then current and reasonably anticipated levels of passenger service. The parties shall also work cooperatively to maximize federal, state and local funding opportunities to pay for construction of the Improvements. Prior to the award by any party of a notice to proceed for construction of the Improvements, SMART and GGB shall enter into an agreement providing for full funding of construction of the Improvements, and if necessary, a program of joint use and ongoing operation and maintenance for the SRTC. Such an agreement shall become effective only after it has been considered and approved by the Board of Directors of both SMART and GGB.

c. SMART shall not encumber, assign, transfer or otherwise hypothecate the Hamilton Agreement contract rights without the prior written consent of GGB provided that SMART may assign these rights to a successor in interest to SMART, who shall take subject to the terms of this Agreement. In the event SMART does not exercise its rights under the Hamilton Agreement to acquire the Station Site by January 1, 2018, the Hamilton Agreement contract rights shall revert back to GGB without further action by the parties. Upon such a reversion, SMART shall have no further interest in the Hamilton Agreement and GGB may thereafter exercise its rights under the Hamilton Agreement and take ownership of the Station Site.

d. SMART shall accept title to that portion of the ROW subject to the Marin Sanitary Lease. As of the Closing, GGB and SMART shall enter into a Lease Management Agreement that will define their rights and obligations as co-lessors under the Marin Sanitary Lease in the form attached hereto as **Exhibit E**. In addition, GGB shall reserve in the Deed a twenty (20) foot non-exclusive private crossing easement to provide access to that portion of the Marin Sanitary Property west of the San Rafael ROW that is owned by GGB, as shown on the attached **Exhibit F**. As a condition to closing, GGB shall prepare, and GGB and SMART shall agree upon, a legal description for the easement set forth on **Exhibit F**.

(i) GGB hereby grants to SMART an option to purchase that portion of non-ROW real property ("Marin Sanitary Option Property") owned by GGB that is subject to the Marin Sanitary Lease, as set forth on the map attached hereto as **Exhibit G** to this Agreement, in its AS IS WHERE IS condition, subject to all faults, at a price equal to the greater of (a) the price paid by GGB for the Marin Sanitary Option Property plus a rate of return on the purchase price equal to GGB's average rate of return on its invested funds, compounded annually from the date the Marin Sanitary Option Property was acquired, and (b) the fair market value of said property as of the date of exercise of the Option, as determined by mutual agreement of SMART and GGB or by a mutually agreed upon process by which a third party appraiser determines fair market value. In any such valuation, it shall be assumed that adequate access exists across the ROW to allow the conduct of normal commercial activities on the subject property. Transfer of title to the Marin Sanitary Option Property shall be by quitclaim deed. SMART shall pay any and all closing, title insurance and other costs incurred in connection with any such transaction. The option will terminate if not exercised within five (5) years of the date of this Agreement. As a condition to closing, GGB shall prepare, and GGB and SMART shall agree upon, a legal description for the Marin Sanitary Option Property.

e. The parties acknowledge that GGB owns and has continuing obligations to restore a tidal wetlands area in Corte Madera, California known as the "Muzzi Marsh." The parties further acknowledge that GGB and the town of Corte Madera want to provide the public with access to the Muzzi Marsh. Accordingly, GGB shall reserve in the Deed: (1) a temporary crossing easement at Industrial Way in the town of Corte Madera ("Industrial Way Crossing Easement"), (2) a temporary longitudinal access easement ("Industrial Way Longitudinal Easement") from Industrial Way in the town of Corte Madera to the northern most boundary of the Muzzi Marsh, (3) a permanent public access easement ("Access Easement") from the southern boundary of the Muzzi Marsh to the northern most boundary of the Muzzi Marsh, and (4) a permanent construction and maintenance access easement ("Maintenance Easement") (collectively, the "Muzzi Marsh Easements"). The Muzzi Marsh Easements are depicted on the attached **Exhibit H** and will be described in the Deed at Closing based on mutually agreed upon legal descriptions prepared by GGB. The Industrial Way Crossing Easement and Industrial Way Longitudinal Easement will terminate upon SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary to commencement of revenue service over those portions of the ROW subject to said easements. All of the Muzzi Marsh Easements will be assignable by GGB. If, based on an affirmative determination by SMART that is communicated to GGB, it is necessary to relocate the Access Easement to accommodate SMART's proposed rail service over the Corte Madera ROW, the Access Easement will be subject to relocation to a mutually agreeable location on the ROW at SMART's request. Such a relocation will provide comparable access to the ROW from the north and will be timed to coincide with SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary to commencement of revenue service over the Corte Madera ROW.

f. At Closing, SMART shall grant to GGB a license to use a segment of the ROW in the vicinity of Larkspur Ferry Terminal as an overflow parking area for the terminal consistent with past use of this area for such purpose in the form of the license agreement attached hereto as **Exhibit I** ("Larkspur Parking License"). GGB's use of the licensed area will occur in such a manner that will be compatible with all appropriate pre-construction activities

related to SMART's proposed rail service, including without limitation, surveying, engineering, and environmental testing activities, as well as the possible development and use by SMART or others of a public bike path within the ROW. The Larkspur Parking License will be for a term commencing on the Closing Date and ending on the date of SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary to commencement of revenue service over that portion of the ROW subject to it.

1.5 Station Site Use. SMART agrees to coordinate with GGB, MCTD and County in the future identification, design and construction of station sites on the ROW, including the Hamilton Station Site, to assure that appropriate access to the station sites will be provided to GGB, County and MCTD for the performance of their respective transportation responsibilities.

ARTICLE II

"AS IS" TRANSFER, ASSUMPTION OF OBLIGATIONS AND INDEMNITY

2.1 "AS IS" Transfer. SMART acknowledges and agrees that the GGB/County/MCTD Assets are conveyed to and accepted by SMART in an "as is" condition with all faults, subject to those rights as described in Section 1.4 of this Agreement and all other existing encumbrances of any type or nature. GGB, County and MCTD do not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the ROW or any of such related matters; in particular, but without limitation, GGB, County and MCTD make no representations or warranties with respect to the use, condition, title, occupation or management of the GGB/County/MCTD Assets.

2.2 Receipt of Benefits and Assumption of Liabilities. Effective as of the Closing Date, SMART hereby shall (a) succeed to all of the benefits of ownership of the GGB/County/MCTD Assets, and (b) assume and perform or otherwise satisfy, any and all contracts, obligations, claims and/or other liabilities of any type or nature, whether currently existing or contingent, and whether or not disclosed by GGB, County or MCTD to SMART, that have been entered into or incurred by GGB, County and/or MCTD in connection with the acquisition, ownership, management and/or development of the GGB/County/MCTD Assets by GGB, County or MCTD prior to the Closing Date, including those related to the known or unknown physical and environmental condition of the ROW (collectively, "Liabilities"). Nothing herein is intended or should be deemed to limit SMART's right to contest the validity of any of the Liabilities with any third party in any way, it being the express intent of the parties for SMART to have the ability to do so. Prior to Closing, GGB shall inform SMART of any actually known contracts, obligations, claims, and/or other liabilities which pertain to the ROW, including without limitation, any state or federal administrative actions or any tort claims or demand letters.

2.3 Indemnification.

a. SMART shall fully indemnify, defend and hold harmless, GGB, County, MCTD, their successors and assigns and their directors, officers, employees and agents (each an "Indemnitee", and collectively, the "GGB, County and MCTD Indemnitees"), from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person, or

any property damage, arising out of or resulting from (i) the Liabilities, (ii) any breach of any representation, warranty or covenant expressly established in this Agreement by SMART, and/or (iii) SMART's acquisition, ownership, management and/or development of the GGB/County/MCTD Assets after the Closing Date. SMART's obligation to defend shall include the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered against any person indemnified in this paragraph, SMART shall, at its expense satisfy and discharge the same.

b. GGB, County and MCTD shall fully indemnify, defend and hold harmless, SMART and its directors, officers, employees and agents (each an "Indemnitee", and collectively, the "SMART Indemnitees"), from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person arising out of or resulting from any breach by GGB, County or MCTD of their respective representations, warranties and/or covenants expressly established in this Agreement. GGB, County and MCTD's obligation to defend shall include the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered against any person indemnified in this paragraph, GGB, County and/or MCTD shall, at their expense satisfy and discharge the same.

2.4 Release. Upon the Closing, SMART hereby releases and discharges GGB, County and MCTD Indemnitees, and each of them, from any and all claims, actions, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses (including, without limitation, court costs and attorneys' fees), damages, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, whether arising, or accruing before or after the Closing Date, based on, arising out of, or in connection with the acquisition, ownership, management and/or development of the GGB/County/MCTD Assets by GGB, County or MCTD, including, without limitation, the Liabilities, SMART's ownership, management and/or development of the GGB/County/MCTD Assets after the Closing Date, and all matters directly or indirectly claimed or alleged between the parties in connection therewith or in any way related thereto. SMART agrees and acknowledges that this release applies to both known and unknown claims and agrees to waive the benefits of Civil Code §1542, which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The Parties agree and represent that they may hereafter discover facts different from or in addition to those they now know or believe to be true in respect to the claims, demands, debts, liabilities, accounts, actions or causes of action herein released, and hereby agree that these releases shall be and remain in effect in all respects as complete, general and full releases as to the matters released, notwithstanding any such different or additional facts.

ARTICLE III

TITLE AND CLOSING

3.1 At the Closing, GGB County and MCTD shall execute and deliver to SMART the Deed. Title in Sonoma County shall be evidenced by the issuance by North American Title Company (the "Title Company"), at SMART's cost, of a CLTA owner's policy of title insurance in an amount to be determined by SMART, insuring title in SMART to that portion of the ROW in Sonoma County, subject to any and all exceptions of title mutually agreeable to SMART and Title Company. Title in Marin County shall be evidenced by the issuance by Old Republic Title Company, at SMART's cost, of a CLTA owner's policy of title insurance in an amount to be determined by SMART, insuring title in SMART to that portion of the ROW in Marin County, subject to any and all exceptions of title mutually agreeable to SMART and Old Republic Title Company. The title insurance policies issued by North American Title Company and Old Republic Title Company shall collectively be referred to as the "Title Policy". GGB, County and MCTD expressly disclaim any warranty of title of the ROW.

ARTICLE IV

SMART'S CONDITIONS TO CLOSING

The following are conditions precedent to SMART's obligation to accept the GGB/County/MCTD Assets:

4.1 Approval of Title. Within ten (10) days after opening of escrow, SMART, at its sole cost and expense, shall obtain a preliminary title report from the Title Company on the ROW ("Title Report"), together with copies of the documents underlying the exceptions contained therein. The Title Company shall deliver a copy of the Title Report to GGB, County and MCTD for informational purposes. Within thirty (30) days after receipt by SMART of the Title Report and the legal description of the ROW ("Title Contingency Date") SMART shall notify GGB, County and MCTD whether or not SMART accepts the state of title of the ROW or whether SMART disapproves of the state of title of the ROW and desires to terminate this Agreement. GGB, County and MCTD shall have no obligation to cure any title deficiencies identified by SMART. If this Agreement is terminated pursuant to this Section 4.1, SMART shall pay the Cost of Cancellation of the Escrow, and no party to this Agreement shall have any further rights or obligations under this Agreement (other than the Surviving Obligations). The term "Cost of Cancellation of the Escrow," as used herein shall be the costs accrued and charged by Title Company for the Cost of Cancellation of the Escrow only.

4.2 Inspections and Studies. For the period of time commencing on the Effective Date and ending at such time as is designated in writing by SMART but in no event later than ninety (90) days from the date of this Agreement ("Contingency Period"), SMART shall have the right to conduct any reasonable and non-destructive inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, economic feasibility studies, and soils, seismic and geologic reports and environmental testing) with respect to the

ROW as SMART may elect to make or maintain. The cost of any such inspections, tests and/or studies shall be borne by SMART.

(a) During the Contingency Period SMART and SMART's employees, agents, contractors, subcontractors and consultants (collectively, "SMART's Representatives") hereby are granted the right to enter upon the ROW, at reasonable times during ordinary business hours upon notice to GGB at least seventy-two (72) hours prior to entry, to conduct such reasonable and non-destructive inspections, investigations, tests and studies of the ROW as SMART may designate (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, and soils, seismic and geologic reports and environmental testing). All such testing shall be conducted in a manner which minimizes interference with GGB's bus and other operations. The cost of all such inspections, tests and/or studies shall be borne solely by SMART. SMART shall, to the extent permitted by law, use its best efforts to keep confidential and not to disclose to any third party any information obtained or developed in connection with the GGB/County/MCTD Assets, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans. In any event, SMART shall promptly notify GGB of any potential disclosure or request for disclosure prior to releasing or permitting the release of such information.

SMART shall indemnify, defend and hold GGB, MCTD and the County of Marin harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the ROW by SMART or SMART's Representatives or liens arising from SMART's due diligence review of the ROW. Prior to any entry on to the ROW by any contractor, subcontractor, consultant or agent engaged by SMART (each, a "Permittee"), said Permittee shall obtain a policy of commercial general liability insurance with a financially responsible insurance company acceptable to GGB covering the activities of such Permittee on or upon the ROW. This insurance shall provide a per occurrence limit of at least One Million and No/100ths Dollars (\$1,000,000.00) and an aggregate limit of at least Three Million and No/100ths Dollars (\$3,000,000.00). This policy of insurance shall name GGB, the County of Marin and MCTD as an additional insured, and shall (as to any loss arising from the acts or omissions of any of SMART's contractors, subcontractors, consultants or agents) be primary and non-contributing with any other insurance available to GGB, the County of Marin and MCTD. Prior to said Permittee's entry onto the ROW, SMART shall assure that said Permittee shall deliver to GGB a certificate of insurance evidencing that the foregoing insurance is in place. Additionally, SMART shall, at its own cost and expense, procure and maintain Workers' Compensation as required by Section 3700 et. seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.

Prior to the expiration of the Contingency Period, SMART shall deliver to GGB, the County of Marin, MCTD and Escrow Holder written notice ("Contingency Period Notice") of its approval or disapproval of the ROW. The failure of SMART to timely deliver the Contingency Period Notice shall be deemed to constitute SMART's disapproval of the ROW. If SMART disapproves of the ROW, this Agreement shall terminate and the parties will have no further obligations or rights to one another under this Agreement (other than the Surviving Obligations).

If this Agreement is terminated pursuant to this Section, SMART shall deliver to GGB, at no cost and without representation or warranty as to accuracy or correctness, (i) any and all documentation (including without limitation, leases, licenses, other agreements, environmental documentation, and title documentation,) regarding the GGB/County/MCTD Assets delivered by GGB to SMART ("Property Materials").

4.3 Approval. SMART's Board of Directors shall have approved this Agreement and the acceptance of assets contemplated by it. SMART's obligations to accept transfer of the ROW is expressly conditioned on SMART's approval prior to Closing, in its sole discretion, of the condition of the ROW. SMART's acknowledgment of the Certificate Acceptance to be delivered in connection with the Deeds shall be deemed SMART's approval of the condition of the ROW for this purpose.

4.4 Regulatory Authority. SMART shall have filed a notice of exemption with the Surface Transportation Board ("STB") in connection with SMART's acquisition of the ROW.

4.5 Grant Funding Assurances. SMART will have agreed to accept any terms and conditions to the acceptance of the GGB/County/MCTD Assets to it imposed by any state or federal funding authority that provided funding for their acquisition.

4.6 Performance by GGB, County and MCTD. GGB, County and MCTD shall have performed all of the obligations to be performed by them pursuant to this Agreement.

4.7 CEQA/NEPA Compliance. SMART shall have complied with the California Environmental Quality Act and the National Environmental Policy Act, as applicable, to transfer the ROW to SMART pursuant to this Agreement.

4.8 Final Approval of Legal Descriptions. SMART shall have verified and approved legal descriptions as prepared for Exhibits C, F, G and H.

ARTICLE V

GGB, COUNTY AND MCTD CONDITIONS TO CLOSING

The following are conditions precedent to the obligation of GGB, County and MCTD to transfer their respective interests in the GGB/County/MCTD Assets.

5.1 Approval. The respective Board of Directors of GGB, the Marin County Board of Supervisors and the Board of Directors of MCTD shall each have approved this Agreement and the transfer of assets contemplated by it.

5.2 Regulatory Authority. SMART shall have filed a notice of exemption with the Surface Transportation Board ("STB") in connection with SMART's acquisition of the ROW.

5.3 Grant Funding Assurance. GGB, County and MCTD shall have received approval of the proposed transfer of the GGB/County/MCTD Assets to SMART from federal and state authorities that provided funding for the acquisition of the GGB/County/MCTD Assets, if any, by GGB, County and MCTD.

5.4 SMART's Performance. SMART shall have performed all of the obligations to be performed by it pursuant to this Agreement.

5.5 CEQA/NEPA Compliance. GGB, County and MCTD shall have complied with the California Environmental Quality Act and the National Environmental Policy Act, as applicable, to transfer the ROW to SMART pursuant to this Agreement.

5.6 Final Approval of Legal Descriptions. GGB, County and MCTD shall have verified and approved legal descriptions as prepared for Exhibits C, F, G and H.

ARTICLE VI

CLOSING

6.1 Opening of Escrow and Escrow Instructions. Upon execution of this Agreement, the parties shall deposit one fully executed counterpart of this Agreement with Title Company and this instrument shall serve as the instructions to the Title Company for consummation of the transfer contemplated hereby. Title Company shall only be responsible for undertaking such matters in connection with the Closing as are specifically provided for herein or in any additional or supplementary escrow instructions delivered by the parties.

6.2 Closing.

a. Closing Date. The consummation of the transaction contemplated by this Agreement and recording of the Deed (the "Closing" or "Close of Escrow") shall occur and delivery of all items to be made at the Closing under the terms of this Agreement shall be made within ninety (90) days of the date of this Agreement, or at such other date as the parties may agree upon (the "Closing Date").

b. Notification; Settlement Statements. If Title Company cannot comply with the instructions herein and to be provided, Title Company is not authorized to cause the recording of the Deeds or close this escrow. If Title Company is unable to cause the recording of the Deed, Title Company shall notify David J. Miller at (415) 777-3200, Patrick Faulkner at (415) 499-7160, and Gregory Dion at (707) 565-2421 without delay.

6.3 Deliveries by GGB, County and MCTD. Not later than one business day prior to the Closing Date, GGB, County and MCTD shall deposit with Title Company the following items:

a. Deed. The Deed from GGB, County and MCTD for their respective interests in the ROW, in the form of **Exhibit D** duly executed and acknowledged by GGB, County and MCTD;

b. Assignment. The Assignment and Assumption Agreement in the form of **Exhibit J** duly executed by GGB, County and MCTD whereby GGB, County and MCTD assign to SMART, and SMART assumes, their respective rights to the Leases, Licenses and Other Agreements;

c. Bills of Sale. Bills of Sale duly executed by GGB, County and MCTD, in the form of **Exhibit K** attached hereto;

d. Non-Foreign Status Certificates. Non-Foreign Status Certificates pursuant to Internal Revenue Code Section 1445 duly executed by GGB, County and MCTD in the form of **Exhibit L**;

e. Management Agreement. The Management Agreement for the Lease to the Marin Sanitary District in the form attached as **Exhibit E**, duly executed by GGB;

f. California Form 597-W. California Form 597-W duly executed by GGB, County and MCTD in the form of **Exhibit M**;

g. Property Materials. The Property Materials listed in the final form of Property Materials Acknowledgment in the form attached as **Exhibit N**; and

h. Other Documents. Any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing which have not previously been delivered.

6.4 Deliveries by SMART. Not later than one business day prior to the Closing Date, SMART shall deposit with Title Company the following items:

a. Closing Costs. Immediately available funds, in an amount sufficient to satisfy all closing costs including escrow fees, recording fees, and title insurance premium fees, as provided in a settlement statement to be prepared by Title Company and approved by SMART;

b. Deed. Executed acceptance of the Deed;

c. Assignment. The Assignment and Assumption Agreement described in Section 6.3(b) above, duly executed by SMART;

d. The Management Agreement described in Section 6.3(e) above duly executed by SMART;

e. Property Materials Acknowledgment. A duly executed original of the Property Materials Acknowledgment attached to this Agreement as **Exhibit N**; and

f. Other Documents. Any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing which have not been previously delivered.

6.5 Prorations. All revenue and expenses of the ROW including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits, and rentals under the Lease(s), shall be prorated and apportioned between SMART and GGB, County and MCTD as of the Closing Date, so that GGB, County and MCTD bear all expenses with respect to the ROW and have the benefit of all income with respect to the ROW through and including the

Closing Date. GGB, County and MCTD and SMART hereby agree that any of the aforesaid prorations that cannot be calculated accurately as of the Closing Date shall be prorated on the basis of the parties' reasonable estimates.

6.6 Special Taxes, Bonds or Assessments. If, at the time of Closing, any portion of the ROW is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as the Closing Date. All installments not then yet due whether or not the same have been prepaid shall not be prorated and SMART shall assume such bonds or assessments. Any prepaid assessments made in advance of their due dates shall be credited to GGB, County and MCTD, as appropriate. In addition, SMART shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the ROW for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by any county or municipality with jurisdiction over a portion of the ROW, and those for (i) common area improvements, whether or not specifically set forth in this Agreement, (ii) local assessment or improvement districts, (iii) any special tax assessments, (iv) traffic mitigation improvements (v) park and recreation fees, and/or (vi) any other public facility infrastructure or traffic mitigation required or imposed by any county or municipality with jurisdiction over a portion of the ROW. SMART shall assume all such bonds or future assessments without offset or adjustment.

6.7 Costs and Expenses. SMART will pay all costs and expenses incurred in connection with the Closing, including without limitation, escrow fees, recording fees, documentary transfer tax fees (if any) and title insurance premium fees.

6.8 Delivery of Documents. Title Company shall forthwith deliver to the party entitled thereto the recorded originals of such instruments or documents upon Title Company's receipt of the same.

ARTICLE VII

POST CLOSING COMMITMENTS OF THE PARTIES

SMART hereby acknowledges that GGB retains a valid public interest in assuring that the ROW is well utilized for public transportation purposes. SMART and GGB mutually acknowledge the need and desire to continue to work cooperatively on a sustained basis to advance the general public transportation mission of each agency and to administer their interdependent transportation planning and operational responsibilities with respect to the ROW. At the request of either party, SMART and GGB shall confer and cooperate on any particular matter related to the ROW that bears upon their respective transportation missions and SMART shall consider any request or proposal in good faith and with due deliberation.

ARTICLE VIII

MISCELLANEOUS

8.1 Dispute Resolution. Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement, which cannot be resolved by the parties after good faith discussions shall be submitted to mediation in the County of Marin, California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until such time as the matter is either resolved or the mediator finds or the parties agree that mediation should not continue. If the parties cannot resolve the controversy, claim or dispute through the mediation process described above, the matter shall be settled by arbitration in the County of Marin, California, administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All direct costs and expenses of each party other than those for payment of the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party that incurs such expenses.

8.2 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

8.3 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. The parties to this agreement may not assign, encumber or otherwise transfer its rights under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and confer no rights on the transferee.

8.4 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over against any party to this Agreement.

8.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

8.6 Amendment. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

8.7 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver

constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8.8 Timeliness. GGB, County, MCTD and SMART hereby acknowledge and agree that time is of the essence with respect to each and every term, condition, obligation and provision hereof.

8.9 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or (i) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as any party may, from time to time, specify in writing to the other in the manner described above:

if to SMART:

Sonoma Marin Area Rail Transit District
4040 Civic Center Drive, Suite 200
San Rafael, CA 94903
Attn: Lillian Hames

with a copy to:

Gregory Dion, Esq.
Sonoma County Counsel Office
575 Administration Drive
Santa Rosa, CA 95403

if to GGB:

Golden Gate Bridge Highway and
Transportation District
Box 9000 Presidio Station
San Francisco, CA 94129-0601

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attn: David J. Miller, Esq.

if to County:

The County of Marin
3501 Civic Center Drive, Room 304
San Rafael, CA 94913
Attn: Amy Van Doren
Transit Planning Manager

with a copy to:

Patrick Faulkner, Esq.
County Counsel of Marin
Civic Center, Suite 342
San Rafael, CA 94903

if to MCTD:

Marin County Transit District
3501 Civic Center Drive
San Rafael, CA 94903
Attn: Amy Van Doren
Transit Planning Manager

with a copy to:

Patrick Faulkner, Esq.
County Counsel of Marin
Civic Center, Suite 342
San Rafael, CA 94903

8.10 Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including mediation or arbitration, brought by any party in which this Agreement is subject, shall be brought in the County of Marin, California.

8.11 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

8.12 Invalidity. Any provision of this Agreement which is invalid, void, or illegal, shall not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement shall remain in full force and effect

8.13 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.14 Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

8.15 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

8.16 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

8.17 Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

8.18 Merger/Survival. Except as otherwise expressly provided herein, the covenants, representations and warranties of Buyer and Seller herein shall merge into the Deed to be delivered by Seller to Buyer at Closing and shall not survive the Close of Escrow. The following provisions shall survive the Close of Escrow: Section 1.4, Article II, Section 6.5, 6.6, Article 7 Sections 8.1, 8.3-6, 8.9-12, and 8.16-18.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have entered into this Agreement with the intent to be legally bound.

GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT, a public agency

By: Maureen Middlebrook
Name: Maureen Middlebrook
Its: Board President

By: Janet S. Tarantino
Name: Janet S. Tarantino
Its: District Secretary

APPROVED AS TO FORM

David J. Miller
Attorney

THE COUNTY OF MARIN, a public agency

By: Harold C. Brown, Jr.
Name: _____
Its: _____ Harold C. Brown, Jr., President _____

APPROVED AS TO FORM

Paul F. Mori
Attorney

MARIN COUNTY TRANSIT DISTRICT, a public agency

By: Harold C. Brown, Jr.
Name: _____
Its: _____ Harold C. Brown, Jr., President _____

APPROVED AS TO FORM

[Signature]
Attorney

SONOMA MARIN AREA RAIL TRANSIT DISTRICT, a public agency

By: Robert Jehm
Name: Robert Jehm
Its: Chairman of the Board

APPROVED AS TO FORM.

Mary T. Dean
Attorney

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF THE ORIGINAL DEPOSIT AND ONE EXECUTED COPY OF THIS AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ESCROW HOLDER:
TITLE COMPANY

[_____]

By: _____
_____, Escrow Office

