

RESOLUTION NO. 3706-2014

A RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING A MONITORING AGREEMENT AND POST REVIEW DISCOVERY AGREEMENT WITH THE SHERWOOD VALLEY BAND OF POMO INDIANS (SVBP) FOR MONITORING OF THE FORT BRAGG COASTAL RESTORATION AND TRAIL PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME

WHEREAS, the City of Fort Bragg ("City") proposes to develop an approximately 93 acre site ("Project Site") on the western edge of the City adjacent to the Pacific Ocean. The Project Site is bordered on the north by the Pudding Creek Trestle Bridge, on the east by Glass Beach Drive and the Georgia-Pacific Mill Site, on the south by Noyo Point Road and Noyo Bay, and on the west by the Pacific Ocean and MacKerricher State Park. The Project Site consists of the following APNs 008-010-22/24/34/35, 008-020-10/11/12 & 018-430-04/08/10/11; and

WHEREAS, the project ("Project") is proposed to consist of the following: removal of approximately 18 acres of asphalt and packed gravel on the Project Site, and restoration of this area; construction of stormwater infiltration and conveyance systems; construction of 4.5 miles of new multi-use and pedestrian-only trails stretching from the Pudding Creek Trestle Bridge south to Soldier Bay, and from the City's wastewater treatment facility to the Noyo Bridge; construction of a new parking lot and access road at the end of Elm Street and a new parking lot at the southern end of the runway with an access road from either Cypress Street or Noyo Point Road; construction of two welcome centers, three restrooms, bicycle parking racks, 16 interpretive panels and a variety of safety signage, and perimeter and habitat protection fencing; and

WHEREAS, on February 10, 2014, the City Council certified a Subsequent Environmental Impact Report (EIR) for the Project pursuant to CEQA; Title 14, California Code of Regulations, Section 15000 et seq. ("CEQA Guidelines"); and the City's CEQA Implementation Procedures; and

WHEREAS, the Subsequent EIR identified unavoidable impacts to cultural resources; and

WHEREAS, the Subsequent EIR requires certain mitigation measures be implemented to reduce the level of impacts to less than significant; and

WHEREAS, the City has entered into a contract with Pacific Legacy to implement a number of the mitigation measures including completion of an ethnographic study and data collection and analysis; and

WHEREAS, the City has met with SVBP Tribal Council to negotiate a Native American Monitoring Agreement which the SVBP Tribal Council has agreed to sign; and

WHEREAS, Native American Monitoring of certain portions of the Project is required as a mitigation measure in the subsequent EIR; and

WHEREAS, during the construction process there is some possibility that unknown cultural resources sites may be discovered; and

WHEREAS, the City has met with SVBP Tribal Council to negotiate a Post Review Discovery Agreement, which the SVBP Tribal Council has agreed to sign, to effectively handle that possible occurrence.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Fort Bragg does hereby approve the Native American Monitoring Agreement and the Post Review Discovery Agreement with the Sherwood Valley Band of Pomo Indians for the Fort Bragg Coastal Restoration and Trail Project as presented in Exhibits A and B and incorporated herein by reference and authorizes the City Manager to execute same.

The above and foregoing Resolution was introduced by Council/member Hammerstrom, seconded by Councilmember Kraut, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27th day of May, 2014, by the following vote:

AYES: Councilmembers Courtney, Hammerstrom, Kraut, and Mayor Turner.
NOES: None.
ABSENT: Councilmember Deitz.
ABSTAIN: None.



DAVE TURNER,
Mayor

ATTEST:



Cynthia M. VanWormer, MMC
City Clerk

EXHIBIT A

**Monitor Agreement for the
Fort Bragg Coastal Trail Project
April 9, 2014**

This Monitor Agreement for the Fort Bragg Coastal Trail Project Construction ("Agreement") is made and entered into by and between the City of Fort Bragg, a municipal corporation located in the County of Mendocino, California ("City"); and the Sherwood Valley Band of Pomo Indians, a federally recognized Indian tribe ("Tribe") (each, a "party", and collectively referred to as the "parties").

1. **Plans, Specs & Site Prep.** The Project Plans and Specifications shall include a plan sheet (Attachment 1) prepared by the project engineer and approved by the Project's Archaeologist which graphically depicts all construction activities which have the potential to impact archaeological sites/resources through disturbance of native soils, which are non-fill soils that have not been previously disturbed, in known or suspected archaeological areas. Furthermore the construction specifications shall specify that SVBP and the Project Archaeologist shall be notified of the schedule for work/ construction activities in these areas as required under 2. Notification below.

The Project Archaeologist, in consultation with the tribal monitor, will be responsible for overseeing the installation of cultural resource Environmentally Sensitive Area (ESA) demarcation in order to avoid or minimize impacts to cultural resources.

2. **Notification.**

- a. The City or designee (Project Contractor) shall provide notification of the date/time and location of intended construction activities to the Tribal Historic Preservation Officer (THPO) and Tribal Chairman **14 days** (or a shorter period as agreed to by both parties) prior to the start of any construction activities in areas that may impact archaeological sites/resources through disturbance of native soils in known or suspected archaeological areas (as shown in Attachment 1). The notification shall also identify the schedule of days that monitors will be required and the number of tribal monitors requested by the Project Archaeologist. In the course of work, if additional monitors are required as determined by the Project Archaeologist, the City or designee (Project Contractor) shall provide the THPO and Tribal Chairman with notice at least four (4) days in advance of construction activities. If the City or designee fails to provide such notice, and additional tribal monitors are not available, work in the area that requires monitoring shall be delayed until a tribal monitor can be made available (but in no case for more than 5 days). Additional tribal monitors may be required by the Project Archaeologist for example, if the scope of the work changes due to inadvertent discoveries of cultural resources or simultaneous ground-disturbance activities on the project site that requires multiple tribal monitors.
- b. A second notification to confirm the start date of the construction activities (identified in the initial 14 day notice pursuant to paragraph 2.a. of this Agreement) and the number of tribal monitors requested at the project site shall be given to the THPO and Tribal Chairman by the City or designee (Project

Contractor) at least **five (5) working days** prior to the need for and start of tribal monitoring services.

- c. The THPO and Tribal Chairman will notify the City or designee of the name and phone number of the tribal monitor(s) assigned to the project site at least 48 hours before the start of tribal monitoring services.
 - d. The City or designee (Project Contractor) shall notify the THPO and Tribal Chairman and tribal monitor(s), if there will be any changes to the work schedule that impacts the need for tribal monitoring.
 - e. In the event that the Tribe cannot supply an adequate number of tribal monitors in a timely manner for the project, the City or designee (Project Contractor) may hire other qualified Native American tribal monitors from other Mendocino, Lake or Sonoma County tribes to undertake monitoring activities for the project until such time as the Tribe provides its preferred tribal monitor. The City shall advise the other qualified Native American tribal monitor that he or she is required to report monitoring results on a weekly basis to the Tribe. The monitor will work directly for the contractor and the City shall secure and provide to the Tribe a signed confidentiality agreement at least as restrictive as those contained in paragraph 11 of this Agreement from other qualified Native American tribal monitors separately retained by the Contractor.
3. **Number and Location of Tribal Monitors.** Tribal monitoring services will be required whenever construction activities include ground disturbance of native soils in, or adjacent to, known and suspected archaeological sites and areas as identified in Attachment 1. Tribal monitors shall attend and assist the City, its designees, and/or the Project Archaeologist with duties outlined in the Data Collection Plan (DCP) for the Fort Bragg Coastal Trail Project, including but not limited to all archaeological investigations and excavations and ESA monitoring activities. The tribal monitoring crew size shall be determined by the Project Archaeologist. At minimum, however, there shall be one tribal monitor for every separate area of native ground disturbing activity, in areas indicated in Attachment 1 that require Native American Monitoring, that is simultaneously occurring at least thirty (30) meters apart. A general rule of thumb when determining if a monitor is required is that one monitor is required for every piece of operational ground disturbing equipment in an area that requires monitoring.
4. **Compensation.** The City or designee (Project Contractor) will compensate the Sherwood Valley Band of Pomo Indians for tribal monitoring services provided by its tribal monitors. Compensation shall be made from the City or designee (Project Contractor) to the Sherwood Valley Band of Pomo Indians on a bi-weekly basis in accordance with the following rates and procedures.
- a. Invoices will be submitted by the Tribe on a bi-weekly basis and shall be paid to the Tribe within fourteen (14) days of submittal.
 - b. The fee schedule for the use of Sherwood Valley Band of Pomo Indians tribal monitors and staff is as follows:
 - Tribal Monitoring Services- \$ 50.00/hour (per monitor)

- Overtime (9 or more hours in a day excluding drive time to and from the site), Weekend, and Holiday - \$ 75.00/hour (per monitor).
- c. The Sherwood Valley Band of Pomo Indians shall be reimbursed for mileage costs of tribal monitors to and from the project site pursuant to the federal GSA rates.
- d. If the tribal monitor arrives after being notified there will be work, and if there is less than 3 hours of work the tribal monitor will receive 3 hours of pay, otherwise the tribal monitor will be paid for the actual number of hours worked.
- e. Tribal monitors will not be reimbursed for drive time to and from the site.

5. Responsibilities.

- a. The City's Project Archaeologist will provide on-site training to the construction crew/staff to ensure that the tribal monitor and other tribal people are treated with respect and that tribal culture and customs are respected.
 - b. Tribal monitors shall keep daily project notes and submit a copy of the project notes to the Project Archaeologist at the end of each week as a condition of payment. The Project Archaeologist shall consolidate the report for submission to the City, which shall be available to the Tribe upon request. Tribal monitors will also report directly to the Tribe.
 - c. Tribal monitor work hours will be recorded in the Resident Engineer's (RE) diary.
 - d. If a scheduled tribal monitor is not on site when the work day starts, the City or designee will promptly contact the THPO and Tribal Chairman. This contact will be documented in the RE's diary which will contain the time and date the contact took place, what work was described to the THPO and Tribal Chairman to occur that day, and the THPO and Tribal Chairman's response. The work shall proceed with monitoring by the Project Archaeologist until such time as a replacement tribal monitor arrives.
- 6. Construction Discoveries.** If during construction activities any archaeological artifacts or features are encountered, both the Project Archaeologist and the tribal monitors are empowered to stop construction activities within a 50 foot radius of the find. Work within this buffer shall temporarily cease until the Project Archaeologist, in consultation with the tribal monitor, make a determination on (1) whether the find is an archaeological artifact; (2) whether the find is located within an intact context (i.e. not within disturbed fill soils), (3) whether the find is part of a site area that has been mitigated through data recovery, (4) whether the find is an isolated item, (5) whether the find is part of a larger previously unknown archaeological site. and (6) the best course of action to avoid or minimize impacts to the resources as applicable. If the Project Archaeologist and the tribal monitor disagree about the nature of the find and/or any of items 1 through 6 above, the professional Archaeologist will e-mail a photo to the Principal Archaeologist at Pacific Legacy and the Tribal Chairman for additional input before construction in the buffer area may resume.
- a. If the find is determined to be both in an intact context, and meets the standard for designation as an archaeological site or is a portion of a known archaeological

site, then the provisions of the Coastal Land Use and Development Code (CLUDC 17.50.030E), and the Memorandum of Understanding (MOU) and attachments between the City of Fort Bragg and Sherwood Valley Band of Pomo Indians shall be followed.

- b. If the find is determined to be within an area mitigated through data recovery, it shall be expeditiously documented pursuant to the terms of the Data Collection Plan (DCP) and the ESA Monitoring Plan. Materials that are not collected by the archaeologist will be reburied onsite in the designated cultural resource reburial area (as shown in Attachment 2) or other area as agreed upon in writing by the parties.
 - c. If the find is determined to be either from a clearly disturbed context (i.e. disturbed fill soils, back dirt piles) or the find is determined to be an isolated find that is clearly not associated with an archaeological site, the item shall be recorded as such and then reburied onsite in the designated cultural resource reburial area (as shown in Attachment 2) or other area as agreed upon in writing by the parties.
7. **Human Remains.** If human remains and associated items are encountered at any time during this undertaking all applicable state and federal laws including but not limited to, Health and Safety Code §7050.5, PRC 5097.94, and/or PRC 5097.98. Human remains will not be disturbed or removed from their original resting place unless removal is unavoidable and necessary. Procedures for the discovery of human remains and associated items are as follows.
- a. The City or designee shall first contact the appropriate law enforcement agency (County Coroner) and immediately notify the Tribal Chairman and THPO or assigned designee. If the remains constitute a crime scene, all applicable laws and procedures apply.
 - b. If the discovery is not a crime scene, all ground disturbing activities shall cease at the discovery location including a buffer as determined by the Project Archaeologist, in consultation with the Tribal monitor and the THPO, but not less than 50 feet. No construction activities will take place within the buffer until an archaeological investigation has been completed.
 - c. Out of respect for the remains, all work related to the remains shall be conducted out of the public eye, unless otherwise required by law.
 - d. If the Coroner determines that the remains are of, or thought to be of Native American origin, they are required to contact the Native American Heritage Commission pursuant to PRC 5097.98.
 - e. The Native American Heritage Commission (NAHC) will then immediately designate a person or persons it believes is the Most Likely Descendent (MLD). The MLD shall within 48 hours of being notified recommend means for treating and disposing with appropriate dignity, the human remains and associated items.
 - f. The preferred protocol upon the discovery of Native American human remains is to secure the area, cover any exposed human remains or other cultural items, and to avoid further disturbance. No laboratory studies are permitted. The preferred

treatment for exhumed Native American human remains is reburial in an area not subject to further disturbance. Should reburial of the human remains be required, the City shall rebury them in the designated reburial area on site.

8. Other.

- a. Nothing in this Agreement shall excuse the parties from its obligation under any applicable law or regulation. In the event any portion of this Agreement is deemed contradictory to law or regulation, only that contradictory portion becomes void and the remainder of agreement remains in full force and effect. The parties should consult to resolve that contradictory portion with the intent to reform that portion to make it compliant with the applicable law or regulation.
- b. The City shall ensure that all contractors and sub-contractors abide by the provisions of this Agreement.
- c. Any changes to this Agreement must be made in writing and signed by the Tribe and the City. The Construction Contractor shall be notified of any changes.
- d. This Agreement may be signed in two or more counterparts and will be effective when all parties and signatories have affixed their signatures to two or more of the counterparts and said counterparts have been delivered to all parties, at which time the counterparts together will be deemed one original document. This Agreement is executed as of the last date shown below.

9. Cultural Affiliation. The Parties agree that ancestors of the Sherwood Valley Band of Pomo Indians traditionally occupied, and are historically traced to, Mendocino County, which includes the City of Fort Bragg. Furthermore, the City of Fort Bragg lies within the historic boundaries of the Tribe's ancestral lands, and the historic boundaries of the Mendocino Indian Reservation which included tribal members from many different tribes. Thus, cultural resources found within the City of Fort Bragg from historic times may be related to the Tribe or other tribal communities. Additionally, tribal members engage in ongoing contemporary collection and use of some cultural biological resources (both flora and fauna and their habitats) within the City of Fort Bragg.

10. Time is of the Essence. As time is of the essence in a construction project of this magnitude given the short construction season, the Tribe shall participate in a good faith effort to expeditiously engage in consultation. Should any new sites be identified that will be potentially impacted by the project, the Tribe will select an ad hoc committee of two Tribal Council members to work with the City, on an as needed basis, to consult expeditiously with the City of Fort Bragg on the selection of appropriate mitigation measures.

11. Confidentiality. If archaeologically sensitive sites are discovered during the construction process, the location and content of discovered sites shall be kept strictly confidential. It is understood by the parties that, unless otherwise required by law, the site of any location of or reburial of Native American cultural resources shall remain confidential pursuant to the Non-Disclosure and Confidentiality Agreement.

12. **Authority to Execute.** Each of the persons executing this Agreement expressly warrants that he or she is authorized to do so on behalf of the entity for whom he or she is executing this Agreement. Each party to this Agreement represents and warrants that this Agreement is executed voluntarily, with full knowledge of its significance.

CITY OF FORT BRAGG

By: *Linda Ruffing, City Manager*

Date

SHERWOOD VALLEY BAND OF POMO INDIANS

By: *Michael Fitzgerald, Tribal Chairman*

Date

CITY CONTRACTOR

Name & Title:

Date

Contact Information

Sherwood Valley Band of Pomo Indians of Pomo

- Tribal Chairman, Michael Fitzgerald:(707) 459-9690 (office)
SVRchairman@yahoo.com
- THPO, Hillary Renick: 459-9690 (office), hrenick@excite.com
- Native American Monitor, Rudy Avalos, (707) 623-5341;
jinetime77@comcast.net

City of Fort Bragg

- Community Development Director, Marie Jones: 707-961-1807 (office),
707-357-0964 (cell), mjones@fortbragg.com
- City Manager, Linda Ruffing: 707-961-2823; lruffing@fortbragg.com

Construction Contractor

- Name, office number, cell number, e-mail address

Project Archaeologist

- Thad M. Van Bueren, M.A., Pacific Legacy, (707)964-7272, thad@mcn.org

EXHIBIT B

POST REVIEW DISCOVERY PLAN FORT BRAGG COASTAL TRAIL PROJECT

This Post Review Discovery Plan for the Fort Bragg Coastal Trail Project ("Plan") is made and entered into by and between the City of Fort Bragg, a municipal corporation located in the County of Mendocino, California ("City"); and the Sherwood Valley Band of Pomo Indians, a federally recognized Indian tribe ("Tribe" or "SVBP") (each, a "party", and collectively referred to as the "parties").

1. INTRODUCTION

The purpose of this Plan is to efficiently and effectively address unanticipated discoveries of cultural resources and human remains during the Construction of the Fort Bragg Coastal Trail and Restoration Project. The Memorandum of Understanding between the City of Fort Bragg and Sherwood Valley Band of Pomo Indians dated May 27, 2014 and Monitoring Agreement for Fort Bragg Coastal Trail Project Construction is incorporated herein to this Plan (collectively referred to as "Agreements").

2. ON-SITE RESPONSIBILITIES

STEP 1: STOP WORK. If during construction activities any known or suspected cultural resources are encountered, ground disturbing activities in the discovery location with a minimum distance of 50 feet radius from the center of the discovery shall cease immediately. If the find is known or suspected human remains and/or associated cultural resources, ground disturbing activities in the discovery location with a minimum distance of 100 feet radius from the center of the discovery shall cease. The size of the buffer may be adjusted once the project archaeologist, in consultation with the tribal monitor, has had the opportunity to examine the site.

STEP 2: SECURE THE AREA & PROTECT THE FIND. The City or designee is responsible for directing and ensuring the implementation of appropriate steps to protect the discovery site.

- a) The discovery location shall be immediately marked with flagging tape and cordoned off with temporary fencing providing a buffer with the minimum distance identified in Step 1 above. The area shall not be identified, marked, or otherwise described as containing cultural resources, but may be referred to as an "Environmentally Sensitive Area."
- b) All work will stop within the buffer area to provide for the total security, protection, and integrity of the resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site.
- c) If human remains are encountered, they will be treated with dignity and respect at all times. Out of respect for the remains, all work related to the remains shall be conducted out of the public eye, unless otherwise required by law. The remains may be covered with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. The site and content of the discovery shall not be disclosed to the public unless otherwise required by law.

STEP 3: IDENTIFY THE FIND: The City or designee shall ensure that a qualified professional archaeologist and SVBP tribal monitor collaborate to determine the nature of the find.

- a) If it is determined that the find is not archaeological, work may proceed with no further delay.
- b) If it is determined to be an isolated archaeological find, the discovered resource shall be handled and treated in accordance with the applicable provisions of the Monitoring Agreement, the Data Collection Plan and its addendum.
- c) If it is determined to be a new archaeological site the procedures outlined below will be followed. If the Project Archaeologist and the Native American monitor do not agree on the nature of the find, a licensed professional from Pacific Legacy shall consult with the Tribal Chairman and make the final determination.

STEP 4: NOTIFICATION AND TREATMENT. Procedures for notification and treatment of the discovered cultural resources shall be handled and treated in accordance with the applicable provisions of the Native American Monitoring Agreement, the Data Collection Plan and its addendum.

3. PROCESS FOR DEALING WITH NEW SITES

- a) **Resource Determination.** Possible archaeological sites discovered during construction will be assumed to meet the California Environmental Quality Act (CEQA) definition of an "historical resource" (see CEQA Guidelines Section 15064.5 and PRC 21084.1) and qualify as meeting the "unique archaeological resource standard" pursuant to PRC 21083.2 until a formal identification and determination of the significance of the find can be made by a qualified archaeologist and SVBP tribal monitor.
- b) **Identification and Recordation.** All prehistoric and historic cultural sites discovered during project construction will be recorded in accordance with the DCP and its addendum by the City's Project Archaeologist on applicable archaeological site record and California Historical Resources Information System forms.
 - i. Site artifacts may be photographed; any readily visible stratigraphic profiles and general soil/sediment descriptions will be prepared. Discovery locations will be documented on scaled site plans and site location maps. Copies of the completed site forms and all corresponding documentation shall be provided to the Tribe.
 - ii. These activities will be completed without additional ground disturbance to the resource and the relevant buffered area adjacent to it. Only visual examination of already exposed surfaces and artifacts is permitted and all artifacts are to be preserved *in situ* and remain uncollected, and protected, until the site is evaluated by the Project Archaeologist and the Tribal Monitor. Appropriate best management plans shall be put in place to protect the site from erosion if there is a chance of precipitation while the consultation process progresses
- c) **Plan Development & Implementation.** Once initial identifications and assessments are made, the City and Project Archaeologist, in consultation with the Tribe's Ad Hoc Committee (as described in subsection f, below) shall determine:

- i. If additional archaeological investigation/testing is needed to further define the resource;
 - ii. If avoidance of the resource can be achieved;
 - iii. If avoidance is not feasible appropriate mitigation measures will be identified, in accordance with the Subsequent EIR and the Data Collection Plan.
- d) The City shall make a good faith effort to "(1) avoid damaging effects on any historical resource of an archeological nature pursuant to Section 15126.4(b)(3) of the CEQA Guidelines, and (2) accommodate, as feasible, the Tribe's preferred manner of mitigation for avoidance and non-disturbance measures".
- e) If it is determined in consultation with the parties that data recovery through excavation is the only feasible mitigation, then the project's Data Recovery Plan shall be expanded to include the additional requirements and mitigations.
- f) As **time is of the essence** in a construction project of this magnitude, given the short construction season, the Tribe shall participate in a good faith effort to expeditiously engage in consultation for any post review discoveries. Should any new sites be identified that will be potentially impacted by the project, the Tribe will select an ad hoc committee of two Tribal Council members to work with the City, on an as needed basis, to consult expeditiously with the City of Fort Bragg on the selection of appropriate mitigation measures.

6. PROCEEDING WITH CONSTRUCTION

Project construction outside the discovery location & buffer may continue while documentation, assessment and implementation of any required mitigations of the cultural resources proceed. The Project Archaeologist will determine the boundaries and buffer of the discovery location. In consultation with the Tribe (as defined in f above), the City will determine the appropriate level of documentation and implement the treatment plan for the resource.

Construction may continue at the discovery location and within the resource buffer after the process outlined in this Agreement is completed. Nothing herein shall excuse the Parties from their obligations under any applicable state or federal environmental statute

CITY OF FORT BRAGG

By: Linda Ruffing, City Manager

Date

SHERWOOD VALLEY RANCHERIA

By: Michael Fitzgerrall, Tribal Chairman

Date