

TOWN OF FAIRFAX

STAFF REPORT

May 2, 2018

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Approve agreement with Fredric C. Divine Architects (FCDA) for geotechnical, structural engineering, archaeological, and architectural services in an amount not to exceed \$45,000 for the preliminary foundation design for the Pavilion Seismic Retrofit project

RECOMMENDATION

Authorize the Town Manager to execute an agreement with Fredric C. Divine Architects (FCDA) for services in an amount not to exceed \$45,000 for the Pavilion Seismic Retrofit project and provide a \$5,000 contingency for the Town Manager to use to cover unforeseen project costs.

BACKGROUND

In 2008, the Town applied for a FEMA Hazard Mitigation grant for the seismic retrofit (i.e., building protection from earthquakes and high winds) and ADA improvements (i.e., bathrooms, doors, ramp) for the Fairfax Pavilion building. Around 2010, the Town was awarded a \$450,000 grant with a \$150,000 (25%) local match.

In December 2017, staff provided the Council with a historical time line of the project detailing the delays, actions, and meetings with the following agencies since 2012:

- Federal Emergency Management Agency (FEMA)
- California State Historic Preservation Officer (SHPO)
- California Office of Emergency Services (Cal-OES)
- Federated Indians of Graton Rancheria (FIGR)

At the Council's December meeting, the Council authorized staff to sign the Programmatic Agreement (PA) for the project. All the above parties signed the PA by the end of February 2018. The fully executed PA allows the Town to conduct the necessary soil borings to determine the foundation design for the project.

The scope of work is for the geological testing, update to conceptual structural plans based on the soil testing results, allowance for Tribe monitoring costs, allowance for architectural services needed for the PA, and services required per the Archaeological Treatment Plan (ATP) for the soil borings. Per the Archaeological Treatment Plan, which is an exhibit to the PA, the Town is required to retain a qualified archaeologist to examine and analyze the soil borings on-site.

The Town contracted with Tom Origer & Associates to prepare the ATP and is proposing to use Origer to conduct the field work under contract to FCDA. Origer will use the Pavilion kitchen as its on-site daily lab and a storage container will be located near the Pavilion for securing the lab equipment and soil/materials in the evenings. A significant portion of the costs for this phase of the project is for archaeological services. The work would not begin until after the Fairfax Festival.

FISCAL IMPACT

The attached proposal includes allowances for the architect and Tribe monitoring. In the event there is a shortfall in anticipated allowances, staff has requested a project contingency of approximately 10% so as not to delay the project. The project is budgeted in the Town's FY17-18 Capital Improvement Budget. Some of the costs for this phase of the work may not be eligible for reimbursement under the grant. If we want to ensure reimbursement for this phase, we will need to delay the project for a few months in order to issue a Request for Proposals for the required services. Our plan is to issue an RFP for the design of the project after we determine the preliminary project design based on the results of the geotechnical study.

ATTACHMENTS

- A. Proposed Agreement
- B. PA and ATP

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Fairfax, California, as of _____, 20____, by and between the Town of Fairfax, a municipal corporation (the "TOWN") and _____ Fredric C. Divine Architects, Inc., a California Corporation ("CONSULTANT"), who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the TOWN the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."
2. PAYMENT. TOWN shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the TOWN in the manner specified in Exhibit "B."
3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.
5. INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.
6. EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

EXECUTED as of the day first above-stated.

Town of Fairfax, a municipal corporation

By: _____

CONSULTANT

By: _____

EXHIBIT “A”

SCOPE OF SERVICES

To provide geotechnical engineering, archaeological, and project management services required to determine the foundation design for the Pavilion Seismic Retrofit Project as described in the attached proposal.

If there are any inconsistencies between CONSULTANT’s proposal and this Agreement, the provisions of this Agreement shall control.

A R C H I T E C T S

FREDRIC C. DIVINE ASSOCIATES

AGREEMENT

FOR PROFESSIONAL SERVICES

April 11, 2018 (Revised April 27, 2018)

Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 95630

Re: Project 11003.00
Fairfax Pavilion
Phase I
Geotechnical Investigations, Archaeological Treatment

Dear Garrett:

Thank you for selecting us to work with you on the improvements at the Fairfax Pavillion. We will act as your project supervisor under Phase I of Programmatic Agreement prepared by FEMA and CSHPO.

PROJECT DESCRIPTION:

To provide consultant services to oversee Phase I Archaeological Treatment Plan (ATP) and geotechnical investigation services as described in Section I of the programmatic agreement prepared by FEMA for the foundation replacement of the Fairfax Pavilion. Also included is design of undertaking elements that may have ground disturbance as described in Section II of the programmatic agreement, including ADA compliant ramp improvements.

FCDA FEE: \$3,000.00 Allowance (Hourly based on attached hourly rates)
Plus reimbursable expenses x 1.10% (\$100 allowance)

Work by consultants will be charged as an additional reimbursable expense and includes 10% markup of cost.

| | |
|--|---------------------|
| Archaeologist (Tom Origer & Associates) | \$ 30,305.00 |
| Services to implement ATP including research to determine past site impacts, monitor geotechnical borings, excavating test pits, laboratory analysis of archaeological specimens and report preparation. Fee also includes set up of field lab to process and analyze materials and store materials on site. | |
| Geotechnical Engineering (Salem Howes Associates Inc.) | \$ 5,000.00 |
| Services include drilling and sampling of four test boring around the perimeter of the building. A geotechnical report will be prepared including recommendations for foundation design. | |
| Tribe Monitoring (Federated Indians of Graton Rancheria) | \$ 4,000.00 |
| Monitoring of geotechnical borings and archaeology work. Fee includes mileage rate from Concord or Santa Rosa. Approximately 60 hours of time is anticipated. | |
| Structural Engineer (Andersson Woodrow) | \$ 2,000.00 |
| Services include updating the previously prepared concept plans per any new geotechnical recommendations. | |

OTHER TERMS:

We will work on an hourly basis in accordance with the enclosed rate schedule, except as noted otherwise in the scope of services. Reimbursable expenses are in addition to professional fees, and are billed at cost plus 10%. You may stop our work at any time and only be responsible for work done to that point. We will usually bill monthly and payment is due within 30 days. Balances over 30 days are subject to interest at 1-1/2% per month. If any party sues other party(s) to enforce any of the terms of this agreement, the prevailing party shall, in addition to all other damages, be entitled to recover attorneys' fees, including fees and expenses if awarded.

If this proposal meets with your approval, please sign and date one copy of this Agreement and return to us to commence work. Thank you.

Sincerely,

FREDRIC C. DIVINE ARCHITECTS, INC.

A handwritten signature in black ink, appearing to read 'Fredric Divine', with a stylized flourish at the end.

Fredric Divine
Senior Principal

ACCEPTED: _____

DATE: _____

FREDRIC C. DIVINE ARCHITECTS, INC.

SCHEDULE OF HOURLY RATES 2018

| | |
|---------------------------------|-----------------|
| SENIOR PRINCIPAL..... | \$185.00 |
| PRINCIPAL ARCHITECT..... | \$135.00 |
| SENIOR DRAFTER..... | \$100.00 |
| DRAFTSPERSON..... | \$ 85.00 |

****Rates subject to change on an annual basis****

EXHIBIT "B"

PAYMENT

1) The total contract price for services rendered by CONSULTANT under this Agreement shall not exceed \$ _45,000, which shall be paid on a time and materials basis, as specified in Exhibit "A."

Other fees, costs, expenses and rates as described in the PROPOSAL (Exhibit A). In the event of any inconsistency between the terms of this Exhibit "B" and the PROPOSAL, the terms of this Exhibit "B" shall control.

2) Payment shall be made to CONSULTANT on a time and materials basis, and CONSULTANT shall submit monthly invoices to the _Town Manager, Town of Fairfax, 142 Bolinas Rd, Fairfax, CA 94930, for the same.

3) Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the TOWN and CONSULTANT, and shall be billed on a time and materials basis to the Town Manager, Town of Fairfax, 142 Bolinas Rd, Fairfax, CA 94930.

EXHIBIT "C"

GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of TOWN. TOWN shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, TOWN shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to TOWN that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to TOWN that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

4) CONSULTANT NOT AN AGENT. Except as TOWN may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of TOWN in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind TOWN to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that TOWN, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from TOWN of the desire of TOWN for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices its profession. All products which CONSULTANT delivers to TOWN pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. TOWN shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the TOWN at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of TOWN.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the TOWN.

10) INDEMNIFY AND HOLD HARMLESS.

a) If this AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(b)(2), CONSULTANT shall hold harmless, defend and indemnify the TOWN, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the TOWN.

b) If this AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, CONSULTANT shall indemnify, defend, and hold harmless the TOWN, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the TOWN, its officers, agents, employees or volunteers.

c) It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

d) Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

11) PROHIBITED INTERESTS. No employee of the TOWN shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the TOWN if this provision is violated.

12) LOCAL EMPLOYMENT POLICY. The TOWN desires wherever possible, to hire qualified local residents to work on Town projects. Local resident is defined as a person who resides in Marin County. The TOWN encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors,

contractors, consultants and developers will solicit proposals from qualified local firms where possible.

13) FEDERAL REQUIREMENTS. If federal funds are involved in this Agreement, CONSULTANT shall comply with the federal requirements in Exhibit "E". As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

14) CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the TOWN or any TOWN official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any TOWN decision beyond these conclusions, advice, recommendation, or counsel.

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

The following insurance is also required:

- ☐ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the TOWN. At the option of the TOWN, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the TOWN, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The TOWN, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; or

automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the TOWN, its officers, officials, employees or volunteers.

- ii) For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the TOWN, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the TOWN, its officers, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the TOWN, its officers, officials, employees or volunteers.
- iv) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the TOWN.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT's policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the TOWN.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the TOWN with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the TOWN or on forms equivalent to CG 20 10 11 85 subject to TOWN approval. All insurance certificates and endorsements are to be received and approved by the TOWN before work commences. At the request of the TOWN, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.

**PROGRAMMATIC AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF HOMELAND SECURITY'S
FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**THE FAIRFAX PAVILION SEISMIC RETROFIT PROJECT
TOWN OF FAIRFAX, MARIN COUNTY, CALIFORNIA**

WHEREAS, the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA), pursuant to Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended (42 U.S.C. § 5172), and implementing regulations in 44 CFR Part 206, proposes to provide financial assistance pursuant to the Hazard Mitigation Grant Program (HMGP), through the California Governor's Office of Emergency Services (Cal OES or Recipient), to the Town of Fairfax (Town or Subrecipient), Marin County, California, for the Fairfax Pavilion Seismic Retrofit Project (Undertaking) (FEMA-HMGP-1731-60-50); and

WHEREAS, FEMA's provision of financial assistance meets the definition of an Undertaking for which FEMA is responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, FEMA, in consultation with the California State Historic Preservation Officer (SHPO), has determined that it will comply with Section 106 for this Undertaking in accordance with 36 CFR Part 800, implementing regulations of the Advisory Council on Historic Preservation (ACHP) rather than the 2014 statewide Programmatic Agreement among FEMA, SHPO, and Cal OES (2014 Programmatic Agreement) because consultations to comply with Section 106 for this Undertaking were first initiated in 2010 prior to the execution of the 2014 Programmatic Agreement; and

WHEREAS, FEMA has determined, in consultation with the SHPO, that the Area of Potential Effects (APE) for this Undertaking consists of the exterior and interior of the Fairfax Pavilion and the portion of archaeological site (Site) CA-MRN-490 that may be affected by the Undertaking, including direct construction and ground disturbance, construction staging, and equipment access routes for implementation of the Undertaking; and

WHEREAS, FEMA has determined, in consultation with the SHPO, that the following properties may be affected by the Undertaking and are eligible for listing in the National Register of Historic Places (NRHP):

- *Fairfax Pavilion (P-21-000440)*. Fairfax Pavilion, constructed in 1921, has been determined to meet NRHP Evaluation Criterion A (36 CFR 60.4) for its association with events that are part of the broad pattern of history; and

- *Archaeological site (CA-MRN-490).* Site CA-MRN-490 is a prehistoric archaeological site that has been determined to meet Criterion D for its potential to yield information important in prehistory; and

WHEREAS, FEMA, in consultation with the SHPO, has determined that the Undertaking has the potential to adversely affect the Fairfax Pavilion and Site CA-MRN-490 and it will be necessary to apply the criteria of adverse effects (36 CFR 800.5(a)(1)) in a phased manner and to consult regarding measures to avoid, minimize, or mitigate adverse effects on historic properties because the Undertaking will be designed and implemented in a phased manner; and

WHEREAS, FEMA, in consultation with the SHPO, has determined that a Programmatic Agreement (Programmatic Agreement) developed pursuant to 36 CFR 800.14(b) is the appropriate vehicle to guide consultations regarding this phased design of the Undertaking as well as phased application of criteria of adverse effects, and consultations regarding measures to avoid, minimize, or mitigate potential adverse effects to the Fairfax Pavilion and Site CA-MRN-490; and

WHEREAS, by letter dated January 24, 2017, FEMA notified the ACHP of FEMA's adverse effect determination and provided the documentation specified in 36 CFR 800.11(e), and by letter dated February 6, 2017, the ACHP declined to participate in the consultations or to be a Signatory to this Programmatic Agreement; and

WHEREAS, in 2010, FEMA first initiated consultation with the California Native American Heritage Commission (NAHC), the Federated Indians of Graton Rancheria (FIGR) and the Lytton Rancheria, both Federally-recognized tribes, and the Ya-ka-Ama of Forestville, California, which is not a Federally-recognized tribe, and in 2016 FEMA updated its tribal consultation for this Undertaking, and FIGR was the only Tribe to indicate its interest in consulting with FEMA; and

WHEREAS, FEMA has consulted with and will continue to consult with FIGR, a Federally-recognized tribe, which considers Marin County and the APE to be within its ancestral area; and

WHEREAS, FEMA has determined that FEMA, SHPO, Cal OES, the Town, and FIGR are Consulting Parties to this Undertaking; that FEMA and the SHPO are Signatories to this Programmatic Agreement per 36 CFR 800.6(c)(1)(i); and that Cal OES, the Town, and FIGR are Invited Signatories to this Programmatic Agreement per 36 CFR 800.6(c)(2) because they have financial, administrative, or other roles or interests, or have agreed to carry out certain actions under this Programmatic Agreement; and

WHEREAS, FEMA and the Consulting Parties seek, through this Programmatic Agreement and its implementation, to enhance public safety through implementation of the Undertaking as well as to ensure the preservation of the Fairfax Pavilion and Site CA-MRN-490, both historic properties;

NOW, THEREFORE, FEMA and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties and to satisfy FEMA's responsibilities under Section 106 of the NHPA and all applicable regulations.

STIPULATIONS

To the extent of its legal authority, and in coordination with the SHPO, FIGR, Cal OES, and the Town, FEMA shall ensure that the following measures will be implemented as a condition of its HMGP assistance for the Undertaking:

I. Implementation of Phase I Archaeological Treatment Plan, Geotechnical Investigations, and Phase I ATP Report.

- A. The Town shall implement the Phase I Archaeological Treatment Plan (Phase I ATP) for Site CA-MRN-490 (Attachment A). The Phase I ATP calls for the monitoring of geotechnical borings and conduct of archaeological testing of Site CA-MRN-490 by archaeologists who meet the qualifications in Stipulation VIII below and FIGR for the purpose of designing elements of the Undertaking to have least potential to adversely affect Site CA-MRN-490.
- B. Within 45 days after the Phase I ATP has been implemented, the Town shall submit to FEMA a draft Phase I Archaeological Monitoring and Testing Report (Phase I ATP Report) that describes the conduct of the Phase I ATP, the findings of the work completed, and the nature and contents of Site CA-MRN-490. The Phase I ATP Report will be prepared by archaeologists who meet the qualifications in Stipulation VIII, and will meet the Standards in Stipulation VIII. FEMA shall provide copies of the draft Phase I ATP Report to the SHPO and other Consulting Parties for review, finalization, and acceptance by FEMA in accordance with Stipulation VI below. FEMA will provide the SHPO and other Consulting Parties with all comments on the Phase I ATP Report received and a copy of the final version as accepted by FEMA.

II. Design of Undertaking Elements that May Have Ground Disturbance

- A. Within 90 days of the submission of the Phase I ATP Report to FEMA, the Town will submit to FEMA draft designs for the foundation, ADA-compliant ramp improvements, and other elements of the Undertaking that may have ground disturbance. These project elements shall be designed to have the least adverse effects on the Fairfax Pavilion and Site CA-MRN-490 and to take into account the findings of Phase I ATP work. Specifically, the Town shall provide the following information to FEMA for review:
 - i. designs for the project elements with ground disturbance;
 - ii. assessment of potential of each design to adversely affect the Fairfax Pavilion and Site CA-MRN-490 by application of the criteria of adverse effects (36 CFR 800.5(a)(1)), description of the affected portion of historic properties and how they would be affected, and a proposal for means to avoid, minimize, or mitigate adverse effects to the historic properties;
 - iii. description of the Town's preferred design alternative, an explanation of why it is preferred, and information regarding how the Undertaking will be implemented based on the preferred alternative.

- B. FEMA will provide the above designs and information (Stipulation II.A.i-iii above) to the SHPO and other Consulting Parties for review, finalization, and acceptance by FEMA in accordance with Stipulation VI below. FEMA will provide the SHPO and other Consulting Parties with all comments on the designs received and a copy of the final version as accepted by FEMA.

III. Phase II Archaeological Treatment Plan, Implementation, and Report

- A. Within 30 days of FEMA's acceptance of the designs and information per Stipulation II.A. above, the Town will submit to FEMA a draft Phase II Archaeological Treatment Plan (Phase II ATP) that outlines the mitigation of potential adverse effects to Site CA-MRN-490. The Phase II ATP will include the following:
- i. updates to or elaborations on the research questions for Site CA-MRN-490 based on the results of the implementation of the Phase I ATP for monitoring and testing of the Site and the Phase I Report; and
 - ii. a work plan that describes archaeological fieldwork (locations, depths, methods of excavation/retrieval, sampling (if any)), monitoring, and post-fieldwork analyses (level of analysis/identification of materials, sampling, analytical methods, etc.) of recovered materials; and
 - iii. description of the involvement of the FIGR and how their perspectives are addressed; and
 - iv. description of the proposed disposition and curation of records and recovered materials (or a sample of such materials) and a discussion of how the proposal complies with 36 CFR Part 79; and
 - v. description of the recovery, treatment, and disposition of human remains and grave-associated goods or funerary objects, taking into account the expressed views of FIGR and the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007); and
 - vi. description of how the site and its contents will be maintained secure during implementation of the Phase II ATP and implementation of the Undertaking; and
 - vii. description of the reporting of the implementation of the Phase II ATP including schedule for preparation; and
 - viii. resumes for the authors of the Phase II ATP and for the team who will implement it, demonstrating they meet qualifications in Stipulation VIII.
- B. FEMA will provide the draft Phase II ATP to the SHPO and other Consulting Parties for review and comment prior to finalization and final acceptance by FEMA per Stipulation VI. FEMA will provide the SHPO and other Consulting Parties with all comments on the Phase II ATP received and a copy of the final version as accepted by FEMA. Upon FEMA's acceptance of the Phase II ATP, the Town will implement the accepted Phase II ATP.

FEMA's acceptance of the Phase II ATP and its implementation will not require a secondary Memorandum of Agreement or Programmatic Agreement for Section 106 compliance for this Undertaking.

C. Within 180 days of the completion of the implementation of the Phase II ATP, the Town will submit to FEMA a draft report on the Phase II ATP work and its findings (Phase II ATP Report). FEMA will distribute the draft Phase II ATP Report to the SHPO and other Consulting Parties for review per Stipulation VI. FEMA will provide all comments received to the SHPO and other Consulting Parties. If revisions to the draft report are requested by FEMA, the Town will submit to FEMA a revised report within 30 days of the request. FEMA will review, finalize, and accept a revised version of the report per Stipulation VI. For each version of the report, the Town will provide to FEMA five (5) hard copies and five (5) digital copies on CDs. FEMA will distribute copies of the final Phase II ATP Report accepted by FEMA per Stipulation VI to the SHPO and other Consulting Parties, and the Northwest Information Center of the California Historical Resources Information System at Sonoma State University.

IV. Completion of the Fairfax Pavilion Seismic Retrofit Project Drawings and Specifications

- A. The Undertaking shall be designed to avoid adverse effects to the Fairfax Pavilion and Site CA-MRN-490 and to meet the Secretary of the Interior's *Standards for the Rehabilitation of Historic Properties* and recommendations of the applicable *Historic Preservation Briefs* (National Park Service). Preliminary architectural drawings dated December 22, 2011, by Anderson Woodrow and drawings dated March 15, 2011 by Frederic C. Divine Associates for the Undertaking were reviewed by the SHPO. However, additional design development is needed including design of foundation and ADA-compliant ramp and other improvements.
- B. Within 60 days following FEMA's acceptance of the designs in Stipulation II, the Town will provide draft 65% drawings and specifications for the Undertaking to FEMA for review. FEMA will provide the drawings and specifications to the SHPO and other Consulting Parties for review, finalization, and acceptance by FEMA in accordance with Stipulation VI. The 65% drawings and specification will incorporate the architectural solutions described in the January 8, 2015 letter from Laura Kehrlein, project architect, to Wayne Bush, Town of Fairfax and the following additional recommendations made by the SHPO in an email to FEMA dated June 30, 2015:
 - i. detailing of work at existing openings should match existing.
 - ii. existing interior wall cladding should be removed (only as necessary) and reinstalled. Where the existing cladding is too severely deteriorated, new cladding should match the existing in-kind.
 - iii. existing trim and any other opening features should be removed (only as necessary) and reinstalled. Where the existing trim is too severely deteriorated, new trim should match the existing in-kind.

- C. Within 60 days of FEMA's final acceptance of the 65% design, the Town shall provide to FEMA draft 95% drawings and specifications of the Undertaking. FEMA shall provide the draft 95% drawings and specifications to the SHPO and other Consulting Parties for review, finalization, and acceptance by FEMA in accordance with Stipulation VI.
- D. FEMA and the SHPO and other Consulting Parties shall consult to determine if any additional measures are warranted to mitigate potential adverse effects to the Fairfax Pavilion and Site CA-MRN-490. FEMA will prepare a description of the proposed measures and provide it to the SHPO and other Consulting Parties for review, finalization, and FEMA's acceptance per Stipulation VI.
- E. FEMA's acceptance of the documents under this Programmatic Agreement will not require a secondary Memorandum of Agreement or Programmatic Agreement for Section 106 compliance for this Undertaking.

V. Update of Site CA-MRN-490 Records.

Within one (1) year of the implementation of the Phase II ATP, the Town will engage an archaeologist who meets qualifications in Stipulation VIII to re-survey Site CA-MRN-490 and prepare updated California Department of Parks and Recreation (DPR) Series 523 forms documenting it. FEMA will provide a draft version of the forms to the SHPO and other Consulting Parties for review, finalization, and acceptance per Stipulation VI. FEMA will provide all comments to the SHPO and other parties and the final forms. The Town will provide 5 hard copies and 5 CDs of the draft and final forms to FEMA. FEMA will provide one hard copy and one CD with digital files to the Northwest Information Center of the California Historical Resources Information System at Sonoma State University.

VI. Review Procedure

The Town will provide 5 hard copies and 5 digital copies on CDs of all documents to FEMA for review, finalization, and acceptance by FEMA. FEMA will distribute draft documents prior to finalization and acceptance to the SHPO and other Consulting Parties who will be afforded 30 days from receipt of the document for review and to submit written comments to FEMA. FEMA will distribute all comments received to the SHPO and other Consulting Parties. FEMA may determine that additional consultation among the Consulting Parties would be productive and request consultation via a meeting, telephone, email, or other means. FEMA will ensure that the comments of the SHPO and other Consulting Parties are addressed in the final document, and distribute a final version of the document to the SHPO and other Consulting Parties. Failure of a Consulting Party to respond to a draft document within 30 days or to participate in consultations will not preclude FEMA from authorizing revisions to a document, providing its own comments, or accepting a document, as FEMA deems appropriate. If FEMA and the SHPO are unable to agree on a final document, FEMA shall comply with Stipulation IX. FEMA must accept a document in writing prior to its implementation. FEMA will provide the final version of all documents to the SHPO and other Consulting Parties. The Town will provide 6 hard copies and 6 digital copies of all final

documents upon FEMA's acceptance, and FEMA will distribute these copies to the Consulting Parties for their files.

VII. Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects

- A. All ground-disturbing activities associated with the Undertaking will be addressed through the implementation of the Phase I and II ATPs and will be monitored by the Town's qualified archaeologist and a Tribal monitor(s) representing FIGR. If additional ground disturbance is needed to implement the Undertaking, the Town shall inform FEMA, the SHPO, and the other parties who shall consult to determine if additional archaeological investigations, monitoring, or other actions are needed. In such cases, no ground disturbing work shall be conducted until FEMA provides prior written approval.
- B. If there has been an unexpected discovery, or if it appears that the Undertaking has affected or will affect a previously unidentified property or a known historic property in an unanticipated manner, the Town will:
 - 1. immediately stop construction activities in the vicinity of the discovery (within 300 feet of the discovery) and protect the discovery; and
 - 2. Immediately contact FEMA, Cal OES, and the SHPO; and
 - 3. Take all reasonable measures to protect the discovery and avoid or minimize harm to it until FEMA has completed consultation with the SHPO, FIGR, and other signatories per 36 CFR 800.13.
 - 4. If human remains or possible human remains are discovered, notify the Marin County Coroner in accordance with Section 7050.5 of the California Health and Safety Code. If the human remains are determined to be of Native American origin, the Marin County Coroner will notify the California NAHC within 24 hours of the determination. The NAHC will identify a Native American Most Likely Descendent to provide recommendations for the proper treatment of the remains and any associated funerary objects.
 - 5. Assist FEMA in completing the following actions, as required:
 - 6. Upon notification by the Town of a discovery as described above, FEMA will immediately notify the SHPO, the other Consulting Parties, and any other parties that may have an interest in the unexpected discovery, previously unidentified property, or unexpected effects, and will consult with these parties to evaluate the discovery for NRHP eligibility and/or the effects of the Undertaking on historic properties.
 - 7. FEMA will consult with the SHPO and other Consulting Parties in accordance with 36 CFR 800.13 to develop a mutually agreeable action plan with time frames to identify the discovery of previously unidentified property, take into account any

effects of the Undertaking, resolve adverse effects if necessary, and ensure compliance with applicable Federal, State, and local statutes.

8. FEMA will coordinate with Cal OES and the Town regarding any needed modification to the scope of work for the Undertaking necessary to implement recommendations of the consultation and facilitate proceeding with the Undertaking.

VIII. Professional Qualifications, Standards, and Confidentiality

- A. Professional Qualifications. All work to implement this Programmatic Agreement will be carried out by professionals meeting the Secretary of Interior's (SOI) *Professional Qualifications Standards* (SOI Qualifications) (36 CFR Part 61, Appendix A) for the appropriate discipline as determined by FEMA. Archaeological investigations of Site CA-MRN-490 including monitoring, testing, data recovery (excavation), analysis of archaeological materials, and preparation and implementation of documents will be carried out by an archaeologist(s) who meets the SOI Qualifications for archeology and has prior experience investigating shell mound sites in California. All architectural work regarding the Fairfax Pavilion will be carried out by a professional who meets the SOI Qualifications for historic architecture. Tribal representatives or elders consulting under this Programmatic Agreement or monitoring ground disturbing activities are understood to be persons knowledgeable of their tribe's history, culture and religion and need not meet these or other qualifications outlined at 36 CFR Part 61.
- B. Professional Standards. Documentation and work called for in this Programmatic Agreement shall meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 Fed. Reg. 44,716-44,740) including the *Standards for the Rehabilitation of Historic Properties*, *Standards for Preservation Planning*, and *Standards for Archeological Documentation* contained therein. In addition, documentation and work will meet applicable standards and guidelines established by the SHPO including the SHPO's guidance, *Archaeological Resource Management Reports: Contents and Formats* (1990) and *Guidelines for Archaeological Research Designs* (1991, Preservation Planning Bulletin No. 5). In addition, FEMA will adhere to the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007).
- C. Confidentiality. The Consulting Parties acknowledge that information regarding Site CA-MRN-490 is considered confidential, and is subject to Section 304 of the NHPA and Section 6254.10 of the California Government Code (Public Records Act) relating to the disclosure of archaeological site information. Having so acknowledged, the Consulting Parties will ensure that all actions and documentation called for by this Programmatic Agreement are consistent with these authorities.

IX. Intentional Adverse Effects to Historic Properties

Until the terms of this Programmatic Agreement have been fulfilled, FEMA and the Consulting Parties will inform each other of actions or situations that have the potential to adversely affect the Fairfax Pavilion or Site CA-MRN-490. The Consulting Parties will not take actions that may cause such adverse effects and will exercise their legal authorities to prevent such adverse effects. Should FEMA become aware of actions taken to adversely affect the Fairfax Pavilion or Site CA-MRN-490 or actions not taken to prevent such adverse effects, FEMA will inform the Consulting Parties, comply with 36 CFR 800.9(c), and may enforce this Programmatic Agreement through its grant for the Undertaking.

X. Dispute Resolution

- A. If any Consulting Party to this Programmatic Agreement objects in writing at any time regarding the manner in which this Programmatic Agreement is implemented, FEMA will notify the other Consulting Parties in writing of the objection, request their comments on the objection within 14 days after receipt of notification, and consult with the objecting party for no more than 21 days to resolve the objection. FEMA will honor the request of the other parties to participate in the consultation and take into account any comments provided by them in resolving the objection. If the objection is resolved during the 21-day consultation period, FEMA will notify the Consulting Parties that the dispute has been resolved and inform them of the manner of its resolution.
- B. If, after the 21 day consultation period, FEMA determines that the objection cannot be resolved through consultation, FEMA will forward all documentation relevant to the objection to the ACHP, including the objection, other comments on the objection, and FEMA's proposed response to the objection. Within 30 days of the ACHP's receipt of such documentation, the ACHP will:
 - i. advise FEMA that the ACHP concurs in FEMA's proposed response to the objection, whereupon FEMA will respond to the objection accordingly; or
 - ii. provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding its response to the objections; or
 - iii. notify FEMA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. FEMA will consider the resulting comment in accordance with 36 CFR 800.7(c)(4) and Section 110(1) of the NHPA.
- C. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The responsibilities of Cal OES and the Town to carry out all actions under this Programmatic Agreement that are not the subject of the dispute will remain unchanged.
- D. If the ACHP does not exercise one of the above options within 30 days of the receipt of all pertinent documentation, FEMA may assume the ACHP's concurrence in its proposed response to the objection.

- E. FEMA will take into account the recommendations or comment made by the ACHP and the Consulting Parties in reaching a final decision regarding the objection. FEMA's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of the objection will remain unchanged.
- F. FEMA will provide the Consulting Parties and the ACHP a copy of its final written decision regarding any objection addressed pursuant to this stipulation.
- G. FEMA may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

XI. Duration

The terms of this Programmatic Agreement shall be satisfactorily fulfilled within 3 years following the date of execution of this document unless terminated in accordance with Stipulation XII. FEMA will notify the Consulting Parties in writing when FEMA determines that the conditions of the Programmatic Agreement have been fulfilled and the Programmatic Agreement is therefore terminated. This Programmatic Agreement may be extended by amendment in accordance with Stipulation XI.

XII. Amendments

One or more Consulting Parties may request that this Programmatic Agreement be amended pursuant to 36 CFR 800.14(b). Within 30 calendar days of such a request, FEMA will confer with the other Consulting Parties in person, by e-mail, or by telephone to consider the request. Any amendment will become effective on the date a copy of the signed, amended Programmatic Agreement is filed with the ACHP.

XIII. Termination and Noncompliance

- A. If the terms of this Programmatic Agreement cannot be or are not being carried out, the Consulting Parties will consult among themselves for no more than 30 calendar days to amend the document. If the consultation results in an agreement to amend this document, the Programmatic Agreement will be amended per Stipulation XII. If no agreement to amend the Programmatic Agreement is reached at the end of the 30-day consultation period, the Signatories may terminate the document.
- B. If this is terminated, and FEMA decides to proceed with the Undertaking, FEMA will either consult in accordance with 36 CFR 800.14(b) to develop a new Programmatic Agreement or a Memorandum of Agreement in accordance with 36 CFR 800.6(a) or to request the comments of the ACHP pursuant to 36 CFR 800.7(a).

XIV. Effective Execution and Date

This Programmatic Agreement will take effect upon signature by FEMA, the SHPO, the Town, Cal OES, and FIGR. The execution of this Programmatic Agreement, filing it with the ACHP, and implementation of its stipulations evidence that FEMA has taken into account the effects of FEMA's Undertaking on historic properties, has afforded the ACHP an opportunity to comment,

and has satisfied its responsibilities under Section 106 of the NHPA and its implementing regulations in 36 CFR Part 800.

XV. Annual Report

One year from the date of execution of this Programmatic Agreement and each year thereafter that this document is in effect, the Town will provide an Annual Report to FEMA on actions taken during the previous year to implement this Programmatic Agreement. FEMA will provide copies of this Annual Report to the other Consulting Parties.

**PROGRAMMATIC AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF HOMELAND SECURITY'S
FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

REGARDING


**THE FAIRFAX PAVILION SEISMIC RETROFIT PROJECT
TOWN OF FAIRFAX, MARIN COUNTY, CALIFORNIA**

This Programmatic Agreement is signed in counterpart format with each agency/entity signing on a separate page, and then all signatory and invited signatory pages assembled into a complete document. The following are the signatories and invited signatories of the Programmatic Agreement:


- FEMA, Region IX: Robert J. Fenton, Jr., Regional Administrator (Signatory)
- FEMA, Region IX: Alessandro Amaglio, Regional Environmental Officer (Signatory)
- California State Historic Preservation Officer: Julianne Polanco (Signatory)
- California Governor's Office of Emergency Services: Jennifer Hogan, State Hazard Mitigation Officer (Invited Signatory)
- Town of Fairfax, California: Garrett Toy, Town Manager (Invited Signatory)
- Federated Indians of Graton Rancheria: Greg Sarris, Tribal Chairman (Invited Signatory)

SIGNATORY

FEDERAL EMERGENCY MANAGEMENT AGENCY, REGION IX

By  Date 2/23/18
Robert J. Fenton, Jr.
Regional Administrator

FEDERAL EMERGENCY MANAGEMENT AGENCY, REGION IX

By  Date 02/06/2018
Alessandro Amaglio
Regional Environmental Officer

PROGRAMMATIC AGREEMENT

REGARDING

**FEDERAL EMERGENCY MANAGEMENT AGENCY,
FAIRFAX PAVILION SEISMIC RETROFIT PROJECT
TOWN OF FAIRFAX, MARIN COUNTY, CALIFORNIA**

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SIGNATORY

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By


Julianne Polanco

California State Historic Preservation Officer

Date

27 February 2018

PROGRAMMATIC AGREEMENT

REGARDING

**FEDERAL EMERGENCY MANAGEMENT AGENCY,
FAIRFAX PAVILION SEISMIC RETROFIT PROJECT
TOWN OF FAIRFAX, MARIN COUNTY, CALIFORNIA**

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INVITED SIGNATORY

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES:

By Jennifer L. Hogan Date 2/6/18
Jennifer Hogan, State Hazard Mitigation Officer

PROGRAMMATIC AGREEMENT

REGARDING

**FEDERAL EMERGENCY MANAGEMENT AGENCY,
FAIRFAX PAVILION SEISMIC RETROFIT PROJECT
TOWN OF FAIRFAX, MARIN COUNTY, CALIFORNIA**

This Programmatic Agreement is signed in counterpart format with each agency/entity signing on a separate page, and then all signatory and invited signatory pages assembled into a complete document.

INVITED SIGNATORY

TOWN OF FAIRFAX:

By Garrett Toy Date 12/11/17
Garrett Toy, Town Manager

PROGRAMMATIC AGREEMENT

REGARDING

**FEDERAL EMERGENCY MANAGEMENT AGENCY,
FAIRFAX PAVILION SEISMIC RETROFIT PROJECT
TOWN OF FAIRFAX, MARIN COUNTY, CALIFORNIA**

This Programmatic Agreement is signed in counterpart format with each agency/entity signing on a separate page, and then all signatory and invited signatory pages assembled into a complete document.

INVITED SIGNATORY

Federated Indians of Graton Rancheria:

By  Date 1-26-18

Greg Sarris, Chairman

Phase I Fairfax Pavilion Seismic Retrofit Project Archaeological Treatment Plan

Prepared by

Eileen Barrow, M.A.
Registered Professional Archaeologist (#989269)

Janine M. Origer, M.A.
Registered Professional Archaeologist (#1066030)

and

Vicki R. Beard
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Tom Origer & Associates
P.O. Box 1531
Rohnert Park, California 94927

Submitted to

Town of Fairfax

**ATTACHMENT A to Fairfax Pavillon Seismic Retrofit Project Section 106
Programmatic Agreement**

November 2017

November 17, 2017

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INTRODUCTION

The Town of Fairfax, Marin County, California, proposes seismic retrofit and handicap access upgrades to the Fairfax Pavilion building located in Bolinas Park (formerly known as Fairfax Park), a city-owned facility. The project will be funded in part by a Hazard Mitigation Grant Program grant (FEMA-HMGP-1731-60-50) from the Federal Emergency Management Agency (FEMA) (Undertaking) and is subject to Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR 800).

The Fairfax Pavilion is considered eligible for inclusion in the National Register of Historic Places (National Register), and it sits atop prehistoric Native American site CA-MRN-490/H, which is also considered eligible. The pavilion was constructed in 1921 as a dance hall, and was the last of three pavilions built on the park grounds after 1875. The archaeological site is a shell-rich midden situated on a knoll adjacent to the north bank of Fairfax Creek (See Figure 1). Sites such as this often yield a diverse array of cultural items as well as human burials. For example, archaeological excavations at CA-MRN-14, located near Richardson Bay, recovered three relatively intact burials as well as chert scrapers and choppers; obsidian tinklers, flakes, and tools; mortars; pestles; pecked stone fragments; a broken net sinker; a steatite pipe; bone awls, wedges, stingray barb, and whistles; shell beads and pendants; mica fragments; clay daub; red ochre; asphaltum; and a fist-sized rock with a patina of quartz (Moratto et al. 1974). Ground disturbance for the seismic retrofit and accessibility improvements will impact site CA-MRN-490/H, which is known to contain burials and could also contain materials similar to those recovered from CA-MRN-14.

This document serves as the Phase I Archaeological Treatment Plan (ATP) for site CA-MRN-490/H called for by the Programmatic Agreement among FEMA, SHPO, Cal OES, Town of Fairfax, and the Federal Indians of Graton Rancheria (FIGR) for the Undertaking (Fairfax Pavilion Programmatic Agreement or Agreement). This Phase I ATP is an attachment (Attachment A) of the Agreement.

To be considered a Historic Property under Section 106, a resource must meet at least one of the criteria for inclusion in the National Register of Historic Places. The criteria set forth by the National Park Service are as follows:

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- a. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- b. That are associated with the lives of significant persons in our past; or
- c. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. That have yielded or may be likely to yield, information important in history or prehistory.

Project Description and Area of Potential Effects

The project will include installation of a new perimeter foundation and pier and post supports under the existing building, and will provide for handicapped access to the rear of the building. These project elements, which are anticipated to involve ground-disturbance and are likely to affect the archaeological site, have not yet been designed.

The Area of Potential Effects (APE) for the proposed project includes the entire site as well as the Fairfax Pavilion building, both exterior and interior; however, the Area of Direct Impacts (ADI) to the archaeological site is restricted to the footprint of the building and its immediate surroundings.

BACKGROUND

Site CA-MRN-490/H is located on a knoll above Fairfax Creek in an oak woodland setting, and comprises both prehistoric and historical components (Figure 1). FEMA has determined that the prehistoric archaeological component is eligible for inclusion in the National Register under criterion 'D', and the California State Historic Preservation Officer (SHPO) concurred. The Fairfax Pavilion building, which is the historic-period component of the site, also has been determined eligible for the National Register under criterion 'A'.

Archaeological Site CA-MRN-490/H

The prehistoric element of the site was first recorded by Nelson Thompson in 1978. Thompson (1978) described the site as a shell midden and moderately dense obsidian flake scatter within an area measuring 86 by 61 meters, and estimated its depth as greater than 50 centimeters. The site was issued the state identifier CA-MRN-490 as a result of Thompson's documentation. At the time of Thompson's field visit, he noted that erosion was occurring along the south side of the site adjacent to Fairfax Creek and that a community center (Fairfax Pavilion) covered the northern part of the site.

In 2002, Stephen Bryne visited the site and prepared supplemental documentation to bring the site record in line with new state recording procedures and forms (i.e., Revised DPR 523 forms). Bryne noted that the site was "a probable habitation/village site, possibly Coast Miwok." He cited an unpublished manuscript by local historian Jean Secchitano who reported that many artifacts were found during excavation for the 1921 pavilion construction. William and Brian Sagar of the Fairfax Historical Society indicated that a mortar and pestle had been recovered from the property (Sagar and Sagar 2006:8).

The site was visited and documentation enhanced by Lisa Pesnichak of Archaeological Resource Service (ARS) in 2004. The sketch map attached to Pesnichak's record appears to show a much larger site (measuring 160 x 98 meters) with loci of intact, eroded, and disturbed midden and an isolated lithic scatter within the site boundaries (Pesnichak 2004).

Heather Blind (2011) reported on the results of construction monitoring that took place in 2011 in the northernmost portion of CA-MRN-490/H, northwest of the pavilion. No cultural items were found. In April 2016, the site was revisited by Nelson Thompson, who first recorded the site in 1978.

Thompson expressed the opinion that what was presumed to be the site boundary line on the Pesnichak map actually might have been a project area boundary. He found no evidence of cultural materials or archaeological deposits other than in the loci shown on Pesnichak's map. Thompson's field notes state that the intact portion of the site coincides with the highest part of the property. In that area he found black midden soils containing pulverized shell, fire-altered rock, and obsidian waste flakes. He was unable to relocate the lithic scatter loci identified by Pesnichak, possibly because of the presence of landscape materials.

Fairfax Pavilion

The Fairfax Pavilion is the historical component of the site. The pavilion was constructed in 1921 on a nine-acre portion of Fairfax Park that was acquired by the Fairfax Volunteer Fire Department c.1920. Established by the North Pacific Coast Railroad (NPCR) in 1875, Fairfax Park was initially a 15,000-acre excursion park with picnic facilities and a covered dance pavilion (URS 2011). The NPCR leased the property for five years, and in 1880 took another five-year lease but on just 40 acres of the property. The NPCR relinquished the lease after the second term, and over the years several individuals have kept the park operating. A new pavilion replaced the 1875 structure in 1908. The existing pavilion was the third such building constructed at the park. San Francisco architect John A. Porporato designed the pavilion, and it has been the focal point for social and civic activities for nearly 100 years.

The pavilion was first documented during an inventory of historic resources completed by the Fairfax Historical Society. Randall Garrison prepared the Historic Resources Inventory Form for the pavilion in 1977, stating that it was built in 1922 for dancing purposes (Garrison 1977). When Bryne visited the site in 2002, he added the pavilion to the DPR 523 record. The state identifier was then modified to CA-MRN-490/H to reflect the historical component, and the primary number P-21-000440 was assigned in keeping with the State's revised numbering system. He also reported that late nineteenth and early twentieth century artifacts were observed "on the ground surface in the vicinity of the Pavilion" (Bryne 2002:2) but no map was provided to show a more exact location.

Additional information about the pavilion was provided by Pesnichak and Cassandra Chattan, also of Archaeological Resource Service, in 2004. They indicated that the pavilion appeared eligible for local listing under Criterion A because of its association with broad patterns in history, did not consider it significant for its architecture (Pesnichak and Chattan 2004; Pesnicak 2004).

In 2011, URS Corporation completed an historical evaluation of the pavilion and determined that the Fairfax Pavilion was eligible for the National Register under Criterion A and the California Register of Historical Resource under Criterion 1 because of its importance to the community's growth, development, and history, especially in terms of entertainment and recreation.

NATIVE AMERICAN INVOLVEMENT

The Undertaking is within the traditional ancestral territory of the Coast Miwok, a tribe that makes up a part of the Federated Indians of Graton Rancheria (FIGR). FIGR is consulting on the project and will have representatives monitoring all work at the site, and possibly serving as members of the field and laboratory crews.

The tribe's needs are paraphrased below.

1. The Fairfax Pavilion is a burial site. Any human remains and associated funerary items that are discovered should remain in situ and the project shall be redesigned to avoid those remains and funerary items. Should, after consultation with the Tribe and exhaustion of endeavors to leave the human remains and funerary items in situ, all parties shall re-engage in consultation
2. The tribe requires that all recovered archaeological specimens and site soils be redeposited at their original location. Any residual site soils should be placed atop a filter fabric, covered with filter fabric and then covered with archaeological sterile soil and landscaped.
3. Tribal consultation is required upon the Tribe expressing additional concerns or need for consultation.

RESEARCH DESIGN

The research design for these investigations was developed following the general principles outlined in the Office of Historic Preservation's Guidelines for Archaeological Research Designs (1991) and the Secretary of the Interior's Guidelines for Archeological Documentation (National Park Service 1983). Briefly described are theoretical considerations, salient elements of prior research in the region, goals for the investigation, and research questions that realistically can be answered through analysis of materials recovered at the site.

Because of the limited nature of the investigation, confined to the area affected by the retrofit project, it is unlikely that a full suite of archaeological constituents present in the site will be recovered. This restricted sample reduces the ability to apply wide-ranging theoretical constructs. For example, a Marxist based assessment of production and social structure has been applied to bay area shell mounds effectively (Beck 2011). That said, even the portions of CA-MRN-490 that are under investigation have the potential to address issues still under consideration regarding the culture history in the traditional territory of the Coast Miwok. Culture-historical archaeology emphasizes defining societies into cultural groupings based upon their material culture and has been used to prove direct cultural links from prehistoric peoples to their modern descendants. The framework provided by culture-historical theory still gives insight into studying material culture in a temporal setting. Behavioral and cultural changes can be interpreted through the material culture left behind. It allows for noting whether a different group of people moved into a territory or if the behaviors of the people changed to accommodate or imitate outside cultures that began to have influence on them.

Previous Archaeological Research

Earliest studies focused on the cultures of Northern California found that Marin County (where the current study site is situated) was occupied by the Coast Miwok at the time of Euro-American settlement (see Kroeber 1925, 1932, and Kelly 1978, 1991). Coast Miwok language is of the Utian branch of the Penutian stock. The plant and animal lexicon of proto-Utian indicates that it was spoken around the Sacramento-San Joaquin Delta, which suggests a correlation between the proto-Utian community and the Windmill Pattern, which developed in the Delta area sometime after 4,400 years ago. Linguistic evidence suggests that the time depth of the Miwok-Costanoan split is on the order of 4,000 to 4,500 years (Golla 2007; Moratto 1984). Archaeological evidence documents the

expansion of the Windmill Pattern into the Coast Ranges and the San Francisco Bay area after 4,000 years ago can be seen as tracking the westward expansion of Utian speech (Golla 2007).

The first archaeological excavations in Marin County were conducted by Nels Nelson. In 1909 he excavated CA-MRN-76 and in 1910, Nelson Mound 86c, which was subsequently designated as CA-MRN-315. Nelson documented 425 shell mounds along the shoreline of San Francisco, Richardson, and San Pablo Bays (Nelson 1909). Alfred Kroeber's University of California students conducted some of the first surveys of Marin. Usually only large shell mounds were recorded on these surveys, as they represented villages (Barrow 2009). Much of the archaeological work in Marin has been due to development, especially along the county's eastern coast.

In the early 1970s, David Fredrickson (1973) completed his dissertation, which along with a slightly later publication (1974) provided a 12,000-year chronological scheme for Central and Northern California that began with the Paleo-Indian Period and ended with the Emergent Period. The general characteristics of Fredrickson's chronological periods, which remain the foundation for discussions of chronology in the North Coast Ranges, are described below.

Emergent Period (ca. 200 – 1,000 years ago)

Upper Emergent Period characteristics include the appearance of the clam disk bead money economy. Increasingly more goods were moved farther. Local specialization with regard to production and exchange of goods grew. South and central exchange systems were interpenetrated.

Lower Emergent Period characteristics included the introduction of the bow and arrow, which largely replaced the dart and atlatl. South coast marine adaptations flourished. Territorial boundaries became well established, and regularized exchange between groups continued with increased goods being exchanged. Increasing evidence found of distinctions in social status linked to wealth.

Archaic Period (ca. 1,000 – 8,000 years ago)

Upper Archaic Period characteristics include the growth of social-political complexity with status distinctions based on wealth. Shell beads gain importance and they appear to serve as indicators of both exchange and wealth. Group-oriented religious organizations emerge with possible origin of Kuksu religious system. Exchange systems become more complex with regularized sustained exchanges occurring between groups. Territorial boundaries were fluid.

Middle Archaic Period characteristics include a change in the climate, which became more benign. Economy became more diverse. Acorn use introduced as suggested by mortars and pestles. Hunting was important as evidenced by the abundance of dart tips. Sedentism began along with increased population and expansion.

Lower Archaic Period characteristics include lakes drying due to climatic changes. Abundant milling stones suggest emphasis on plants/small seeds for food, and little hunting occurred. Limited exchange took place, and there was a reliance on the use of local materials. Wealth not emphasized, and the dominant social unit appears to be the extended family.

Paleo-Indian Period (ca. 8,000 – 12,000+ years ago)

This is the time when humans first entered California. Lakeside sites established with probable

emphasis on hunting. Milling technology is lacking. Exchange of goods on a one to one basis and not regularized. Social units consisted of extended families that were largely self-reliant, and moved to resources as they became available and were needed.

The thrust of early work in the greater San Francisco Bay Area was on site discovery and description of material culture, with later studies aimed at elucidation of cultures and chronology. The trend in this summary of past work is to show that as new data are accumulated, our understanding of the region's prehistory improves. It is clear that we are able to refine our knowledge, and we have come to see that the span of prehistory is long and complex. If we are to obtain an accurate picture of California's past we will need to maintain our data base (sites) so that they are available for future study. When sites cannot be preserved *in situ*, such as in the case of CA-MRN-490/H, the appropriate course of action is to investigate and remove specimens and information for curation in the form of reports, archives, and collections. These collections, along with those obtained from sites investigated in the future, will form the basis for more refined analyses.

Modern efforts have been devoted primarily to site discovery and preservation, with the need for preservation particularly keen because of increases in population and intensification of land-use that can result in development and possible disturbance/ destruction of cultural sites. The following description of site excavations that have been completed near CA-MRN-490/H provides an archaeological context.

CA-MRN-5 is a midden site located near Richardson Bay. In 1957, two burials were excavated when found during the construction of a wing of the Fireside Inn (Valdivia 1957). In 2002, the site was investigated through mechanical boring, hand augering, and hand excavation to gain an idea of the areal extent. The depth of the site was found to extend into the water table, which was reached between 100 and 170 centimeters and the edges of the site proved to be a thin layer of midden below fill (Greene and Flynn 2003). The investigation report did not detail the data generated from the archaeologically excavated midden unit. During monitoring in 2006 and 2008, multiple burials were exposed and artifacts collected. Among the specimens found were: Napa Valley obsidian flakes and tools; charcoal; *Olivella* beads; animal bones; bone awls, needles, beads, wedges, and sting ray barbs; shell; mortars; pestle; hammerstone; and quartz (Evans, Smith, and Chattan 2008). Based on the paucity of information collected, the site was dated from AD 970 and as late as AD 1760 (Evans, Smith, and Chattan 2008). Obsidian hydration measurements put occupation of the site as early as AD 220.

CA-MRN-14 is a midden site located near Richardson Bay. In 1974, an archaeological field class from San Francisco State University, along with volunteers from the Miwok Archaeological Preserve of Marin, partially excavated the site as it was under the threat of destruction from the development of a residential community. Delays in development allowed for a second excavation in 1975, but in 1976 the site was bulldozed for the construction of the housing development (Riley 1979). The investigation was primarily a data recovery effort. Among the specimens excavated were: chert scrapers and choppers; obsidian tinklers, flakes, and tools; mortars; pestles; pecked stone fragments; a broken net sinker; a steatite pipe; bone awls, wedges, stingray barb and whistles; shell beads and pendants; mica fragments; clay daub; red ochre; asphaltum; and a fist-sized rock with a patina of quartz (Moratto et al. 1974). Three relatively intact burials and many scattered bits of human bone were found across the site. Moratto believes that the site was occupied seasonally from spring through early fall and that site occupation began around AD 1 and ended between AD 1400 and AD 1800.

CA-MRN-17 is a midden site located on De Silva Island, in an inlet adjacent to Richardson Bay. From 1980- 1984, San Francisco State University conducted investigations there. Eight burials were discovered during excavation at the site, two were group burials (Vasta et al. 2003). Among the specimens found were: bone beads and tools; fish hooks; harpoon points; a possible gorge; fish spear points; net sinkers; chert debitage; cores; flake tools; obsidian debitage; bifaces; flake tools; projectile points; shell beads; spoons; pendants; a whole painted shell; shell fragments; mica ornaments; steatite and calcite ear plugs; a steatite pendant; and a charmstone. Seasonality of the site could not be determined based on faunal remains, however fishing primarily took places on the north side of the island based on species remains analyzed. Radiocarbon dating showing the first occupation of the site began circa 3625 BC (Pahl 2003).

CA-MRN-20 is a midden site located on the east side of Strawberry Point. The site was investigated under the threat of severe damage from development in 1950 and 1951 (McGeein and Mueller 1955). Nineteen burials were found, most without grave goods. Specimens associated with the burials included: *Olivella* beads; *Hallotis* pendants; a baked clay figurine; red ochre; a bone nose ornament; and an obsidian projectile point (McGeein and Mueller 1955). Other artifacts found during excavation included: mortars; pestles; obsidian and chert scrapers; bone awls; antler wedges; an obsidian drill; an abrading stone; obsidian points; net weights; a bone gorge hook; bird and shell beads; shell pendants; steatite ear plugs; charmstones; and baked clay figurines (McGeein and Mueller 1955). Based on the artifacts present, it was concluded that the site was primarily occupied during the fall and winter months with the likelihood of some summer occupation, and it was occupied from AD 900 to AD 1500.

CA-MRN-27 is a midden site located at the northwest end of Richardson Bay. It was investigated in 1970 by Tom King, Dave Fredrickson, and volunteers. The investigation was a volunteer based data recovery effort in the face of development. A portion of the site appeared to function as a cemetery with 50 individuals found within a 24 square meter area, no other cemeteries like this have been found in Marin County. The rest of the midden contained no burials, but an examination of the features found during excavation suggested that there were structures to the southern end of the cemetery and a large semi-subterranean house to the north. Few artifacts were found with the burials. King infers that people were buried in the cemetery 400 years ago, but that the site was primarily used 2,000 years ago (King 1970).

CA-MRN-35 is a midden site located in Belvedere, adjacent to Richardson Bay. It was investigated with auger tests and monitoring trench excavation by ARS in 1977 for proposed PG&E trenching. In 2010, Holman & Associates conducted an evaluation of this site to determine whether the cultural materials represented primary or secondary deposits and then monitoring occurred during construction throughout several months (Bielling 2012). Cultural items found during excavation included: bone; shell; obsidian bifaces; impressed clay; and a possible charmstone. Human remains were encountered at 30-40 cm. Cultural items found during monitoring included: obsidian points; groundstone items; pestles; cooking stone; charmstones; and millstone and mortar fragments.

CA-MRN-127 is a midden site located near the Civic Center Lagoon. It was investigated with auger tests, excavation units, and trench excavation by Bielling and Psota (1980). Cultural items found during excavation included: dietary bone and bone tools; dietary shell and shell artifacts; obsidian and chert flakes and tools; ground stone tools, and one human skeleton. The site appeared to have been occasionally occupied during the Middle through Lower Emergent Period; however, the Late

Emergent Period witnessed intensive occupation.

CA-MRN-254 is a midden site located on the Dominican College campus in San Rafael. It was investigated with auger tests, excavation units, and trench excavation by Bieling (1998). Cultural items found during excavation included: dietary bone and bone tools; dietary shell and shell artifacts; obsidian and chert flakes and tools; ground stone tools, and human burials. The site appeared to have been first occupied approximately 1800 years ago with occupation continuing into the historic period. Obsidian hydration dating suggested that the most intensive time of occupation was between 500 and 900 years ago during the Lower Emergent Period.

Investigations at CA-MRN-490/H could increase knowledge of the area's prehistory. Surface observations and artifacts reportedly found at the site suggest that it was a habitation site used over a long period of time. Information regarding the site's time depth, activities occurring at the site, and changes in subsistence strategies and technology are among the questions that could be answered through archaeological investigations.

Research Domains

As indicated above, regional research in prehistory has been largely focused on two major topics: chronology of culture change and resource procurement, and investigations have focused on the data potential of prehistoric deposits in support of criterion D of the NRHP. Contemporary thinking supports investigating the potential for archaeological deposits to meet additional criteria, for their association with events, people, or representation of a specific type, period, or method of construction. Eligibility under Criterion A (association with events) would be supported if the site can be tied to either a significant shift in culture, such as the transition to the bow and arrow, or if represents a single cultural period unmixed with other cultural patterns.

The archaeological deposit is unlikely to meet requirements of criteria B and C. Criterion B requires that a resource be associated with an individual important in our past. It is unlikely that the site can be associated with such a person. Criterion C applies to designed and constructed resources. It is not likely that buildings or structures will be identified within the deposit; however, the presence of house-pits or storage features could establish a point for applying this criterion.

While investigating the site to gather data needed to address applicable research domains, certain information about the physical characteristics of the resource will be gathered. For example, the data recovery plan also will seek to: a) determine the depth of the site; b) describe the soil strata; and c) discover the range and characteristics of cultural materials present. Information about these attributes of the site will be used to address the following questions that form the foundation of the research design.

This research design for investigations was developed from published and unpublished sources including ethnographic literature and various cultural resources reports including surveys and site-specific investigations, as described above. Succinctly presented below is a research design that includes pertinent research questions, a discussion of the types of information needed to answer those questions, and a description of proposed field and laboratory procedures.

Proposed investigations have been restricted to dealing with research questions that have the most potential for being answered by information expected to be obtained from the site. At this time research questions include the following; however, as data are gathered, different research domains may be opened to consideration.

- 1) **When was the site occupied?** This question will be answered through the use of cross-dating temporally diagnostic artifact types, obsidian hydration band analysis, and radiocarbon assays (if suitable materials are found). Previous studies have incorporated obsidian hydration dating as key components to understanding the time(s) and duration of site occupations. The successful use of this dating technique should be well suited to the site proposed to be studied herein, should obsidian be recovered during excavation.

Answering this question will enable discussion on how the site fits into the cultural chronology of the area. This also helps to address the site's potential eligibility to the NRHP under criteria A as the time and duration of occupation tie into the questions of what events the site could be associated with.

- 2) **What activities took place at the site?** The presence of certain items and features could provide the data necessary to answer this question. For example, fire-affected stone indicates the use of fire for heating (cooking and keeping warm), chert and obsidian flakes suggest that flaked-stone tool manufacture or repair (depending on flake types/sizes) took place. Shellfish and bone remains provide information about diet and potentially about the season of site occupation. It is possible that other archaeological constituents will be discovered. For example, milling tools would suggest that plant processing occurred there, and projectile points are indicators that hunting took place in the vicinity. Other activities may be suggested by other types of material remains that might be found at the site. Features within the soil matrix (e.g., pits, house floors, human graves) suggest other activities, such as storage of goods, intensive and sustained occupation, or interment of the dead.

This question can be used to address domains of both population movement and resource movement across the landscape. It can also potentially be used to analyze site structure and the differences between inland, bayshore, and ocean side middens.

- 3) **How does the site fit into local settlement and subsistence models?** The site's biophysical context and its material remains will help address this question. The range of materials found at the site will help indicate the intensity and type of site use. This question also addresses the domain of population movement.

Typically, settlement models indicate that large villages and camps were surrounded and supported by sites where limited tasks took place. Previous studies have demonstrated that sites often appear to be places where the important activity took place. While such sites represent just a part of the settlement system hypothesized for the region, it is important that they be identified so that the full range of a village community's activities and areal extent can be documented.

Diachronically, settlement patterns may have changed. So in combination with dating archaeological phenomena, it should be possible to see changes through time in how regional occupants made and responded to environmental, social, and technological conditions and changes.

- 4) **Is this a single- or multi-component site?** Artifacts that are recovered, in conjunction with the determined dates of occupation, will be used to answer this question. This question will help address chronology.
- 5) **With what groups did the occupants of the site have contact?** Analysis of artifact styles and the sources of recovered obsidian will be used to determine directions of influence and suggest with which neighboring groups the site's occupants had contact. Visual source characterization will be used to determine the geologic origins of obsidian specimens at the site. Geochemical source analysis of obsidian will be conducted, if needed. The presence of obsidian from Lake County would suggest ties with groups to the far north. In contrast, obsidian from Napa and Sonoma counties would suggest contact and trade with groups to the nearer north and northeast.
- 6) **What evidence for change over time in technology and lifeways is there at the site?** For example, did the site occupants' interaction sphere change overtime? Are there changes in artifact style over time that could reflect the influence of groups in other regions? Are there changes in how the site was used and the kinds of activities carried out there? Intra- site structure and the stratigraphic place of certain diagnostic items should help address the topic of change as deeper items should be older and possibly different from those recovered in the upper levels. This question, while directly related to chronology, also contains elements of population and resource movement.

Generally, earlier sites are dominated by lithic scatters suggestive of limited task sites that could be attributed to a "forager" strategy where inhabitants moved from site to site as resources became available seasonally. Later in time, midden deposits, demonstrative of villages or long term occupation, developed, and this could suggest a shift to a "collector" strategy where site occupants radiated out from the main village, collected resources, and transported them back to their residences at the village.

As Indicated above, technological change is suggested by early use of milling equipment with a shift in later times to mortars and pestles. A shift from a variety of obsidian sources being present in sites to an exclusive use of Napa Valley obsidian suggests changes also in intertribal relationships. The causes of these changes are not understood; however, as the corpus of archaeological data grows, the possibility of understanding the cause of these changes increases.

Based on the planned limited excavation of CA-MRN-490/H, the above questions appear to be the most suitable to contribute to the major regional research topics of chronology patterns and population movement along with contributing to knowledge of subsistence patterns and changes in technology and lifeways.

PHASE I PLAN COMPONENTS

This Phase I ATP describes general and specific procedures that will facilitate the design of the seismic retrofit and handicap access upgrades to the Fairfax Pavilion. The goals of these procedures are to seek ways to limit site disturbance as much as possible, to limit ground-disturbing activities where it is possible, and to facilitate the design of the ground-disturbing activities to have the least impact as possible. A phased approach is outlined to accomplish those goals. Phase II of this ATP will be developed, as needed, based on the design of the seismic retrofit and handicapped upgrades.

Pre-Excavation (Phase I ATP)

Geotechnical Borings and Exploration

In coordination with the Town's designated geotechnical firm, an archaeologist who meets the Secretary of the Interior's professional qualifications for a prehistoric archaeologist (qualified archaeologist) and FIGR Tribal monitor will observe four borings required for construction design purposes. Soil samples will be examined to determine the presence or absence of archaeological materials and/or culturally modified soils. This phase will establish the depth and nature of the archaeological deposit in the ADI and facilitate the design of the project elements anticipated to potentially impact the archaeological site. Additional borings will be made, if warranted, to obtain information about the extent and depth of the midden, to locate areas of previous disturbance, or to determine if materials are redeposited from elsewhere on the site. The need for additional borings will be decided in consultation with FIGR, and the number of borings will be minimized as much as possible to limit site disturbance.

In addition, a qualified archaeologist will excavate a limited number of shovel test pits to establish the width and depth of the builder's trenches for the existing foundation and pier supports. A representative from FIGR will monitor this work. The location of each test pit will be documented and mapped. The dimensions of the builder's trenches will be determined based on observable differences in materials composition. Approximately eight test pits, measuring 25 by 25 cm, will be excavated with standard hand tools (shovels, trowels, picks, etc.). Depths of the test pits will depend upon the depths of the builder's trench and piers.

Excavated soil will be "dry-screened" with six millimeter wire mesh. A layer of filter fabric will be placed at a suitable location selected by project personal (i.e., City, tribe, and archaeologist), and excavated soil will be screened onto the fabric. When all screening is completed and all archaeological materials are studied, they will be added to the screened soil and covered with a second filter fabric. The entire pile will be covered by an archaeologically sterile soil and landscaped. The city will provide the filter fabric, archaeologically sterile soil, deposit the sterile soil, and complete landscaping acceptable to the tribe.

Because the tribe prefers that all archaeological soils and materials remain on the pavilion grounds, an on-site laboratory and secure storage will be established so that recovered archaeological specimens can be catalogued and analyzed at the site. It is expected that the pavilion will be available to use as a secure field laboratory. Cataloging will include cleaning (as needed), sorting the specimens into standard archaeological classes (e.g., bone, shell, tools, ornaments, fire-affected rock) after which they will be quantified (weighed and counted). Shellfish and non-human bone will be sorted according to genus and species when possible. We estimate that each shellfish sample will be on the

order of 100 to 200 grams. Lithic debris will be sorted by debris type using the State Office of Historic Preservation "Sparse Lithic Scatter" and U.S. Forest Service "Farm" documents. All obsidian specimens will be assigned to geological source based on macroscopic traits and microscopic traits for those subjected to obsidian hydration analysis. A sample of obsidian will be subjected to XRF, as needed and approved by the tribe. Note, XRF analysis requires taking the specimens off-site. Specimens subjected to XRF analysis will include those that our analysts cannot positively identify based on macroscopic traits. Up to 100 obsidian specimens will be subjected to hydration dating. Specimens subjected to hydration dating will be selected from recovered debris; however, no formed tools will be analyzed unless agreed to in writing by the tribe. All specimens will remain at the project site and then be reburied there.

If human remains are identified, the County Coroner will be notified, as specified on Section 7050.5 of the Health and Safety Code. Excavation will be stopped in the vicinity of discovered human remains until the County Coroner can determine whether the remains are those of a Native American. Section 7050.5(b) outlines the procedures to follow should human remains be inadvertently discovered in any location other than a dedicated cemetery. If the County Coroner determines the remains are of Native American origin, the Coroner will contact the Native American Heritage Commission. The Native American Heritage Commission will identify the Most Likely Descendant, who will make recommendations regarding treatment and disposition of the remains.

Identification of Past Impacts

Historical records, photographs, and construction drawings will be examined to determine if past activities have impacted the site and where the impacts occurred. People familiar with the park, and especially with construction of the pavilion, will be interviewed.

Data Assessment

Data acquired during the boring and exploration phase and from historical research will inform the design of the new foundation and handicap ramp. The design process will focus on a plan that requires the least amount of disturbance to the archaeological site.

Reporting

An Archaeological Monitoring and Testing Report of findings per the Agreement will be submitted for review by FEMA, SHPO, Cal OES, the City, and FIGR at the conclusion of the Pre-Excavation Phase. The Agreement outlines specific provisions for the review of the Archaeological Monitoring and Testing Report.

Treatment Phase (Phase II ATP)

Foundation- and ADA-compliant ramp improvements and any other project elements with the potential for ground disturbance will be designed to have the least impact to Site CA-MRN-490/H. Per the Agreement, a Phase II ATP will be developed based on the designs for the foundation- and ADA-compliant ramp improvements and any other project elements as accepted by FEMA following review in accordance with the Agreement.

The Phase II ATP will describe the treatment of the Site CA-MRN-490/H to mitigate any adverse effects of the Undertaking through archeological data recovery and other means. The Phase II ATP will build on the results of the Phase I archaeological investigations, address the Research Design

contained in this ATP including any elaborations to it from the Phase I work, and include the items outlined in the Agreement. The Phase II ATP will be submitted to FEMA for review by FEMA and the Consulting Parties per the Agreement.

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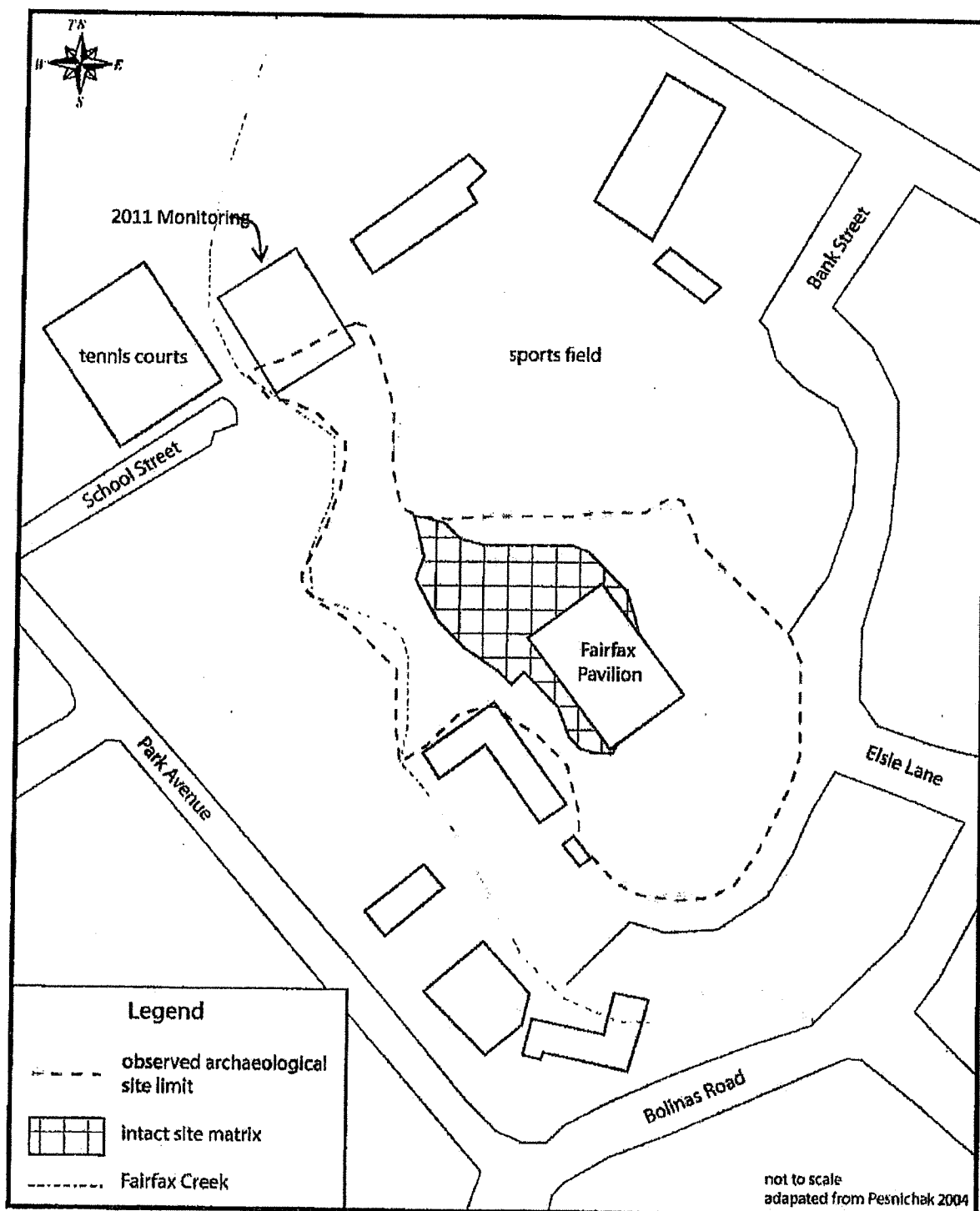


Figure 1. Sketch of CA-MRN-490/H.