



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240



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Mr. Tom Whitney
Acting Environmental & Hydraulic Manager
Olympic Region
Washington State Department of Transportation
150 Israel Road SW, F1 4, Tumwater
Olympia, Washington 98501-7417

Dear Mr. Whitney:

As requested, the Department of the Interior (Department) has reviewed the Draft Section 4(f) Evaluation for the **SR-167 Freeway between SR-161 (Meridian Street North) in Puyallup and the SR-509 Freeway in the Port of Tacoma, Pierce County, Washington**. The Department offers the following comments for this project.

The Department agrees with the Washington State Department of Transportation (WSDOT) that there are no prudent and feasible alternatives to using Section 4(f) resources. The Department appreciates the thorough discussion generally presented in the Section 4(f) Evaluation. In particular, the explanation of unique circumstances, such as tribal trust lands and wetlands, was very helpful.

The Department would like to mention some other areas of concern.

Puyallup Recreation Center

The Department commends and supports the planning for architectural or vegetative screening to block the view of traffic and vegetating the embankment side slopes for the Puyallup Recreation Center. See page 26, Draft Section 4(f) Evaluation: SR 167 Puyallup to SR 509.

As noted in the Section 4(f) Evaluation, pursuant to the Department of Transportation Act and the Federal Highway Administration (FHWA) regulations, "[t]he Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that: (i) There is no feasible and prudent alternative to the use of land from the property; and (ii) The action includes all possible planning to minimize harm to the property resulting from such use." 23 C.F.R. § 771.135(a).

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Moreover, constructive use occurs when the transportation project does not incorporate land from a Section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features or attributes of the resource are substantially diminished.

The Section 4(f) Evaluation does not consider the proposed project to result in a "use" of the Puyallup Recreation Center. See Evaluation at page 26, Table 3—Section 4(f) Use—Recreational Resources Eligible for Section 4(f) protection. However, though the recreation center would not be acquired and "used" by being incorporated into the project, the proximity of the project will greatly increase the noise level.

It seems that a "constructive use" will occur due to the increased noise. The Section 4(f) Evaluation also seems to suggest this by acknowledging that "[t]he FHWA noise abatement criterion for active recreation areas is 67-dBA," and the noise from the project will "increase from 52-dBA to 70-dBA." *Id.* This is consistent with FHWA regulations, which state that a constructive use does not occur if noise levels "do not exceed FHWA noise abatement criteria..." 23 C.F.R. § 771.135(p)(5).

The Evaluation further states that while construction of a noise wall was found to be feasible because a 10-foot high wall 2,400 feet long would provide a 7-dBA reduction in noise for the Recreation Center, this option is not reasonable under established WSDOT criteria and therefore, the wall should not be constructed.

However, if there is a "use," then all possible planning must occur to minimize harm. It seems then that construction of a noise wall would be appropriate. The Department recommends consideration of a scaled-down version of the 10-foot high, 2,400 feet long, noise wall, which offers enough reduction in noise to meet the FHWA noise abatement criteria. In the alternative, the Department recommends consideration of other noise reduction mitigation measures, if the noise wall is not viable.

Maps

Finally, for the final Section 4(f) Evaluation, the Department recommends including larger scale maps that are in color to differentiate project boundaries, existing roads, etc. (as opposed to black and white), since some of the maps were difficult to read.

The Department has a continuing interest in working with the FHWA and WSDOT to ensure that impacts to resources of concern to the Department are adequately addressed. For continued consultation and coordination with section 4(f) issues, please contact Kelly Powell, National Park Service, Pacific West Region, 909 First Avenue, Seattle, Washington, 98104, at 206-220-4106 or kelly_powell@nps.gov.

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The Department appreciates the opportunity to provide these comments.

Sincerely,



Willie R. Taylor
Director, Office of Environmental
Policy and Compliance

cc: Megan Hall
Area Engineer, Olympic Region
Federal Highway Administration
711 S. Capitol Way
Suite 501
Olympia, WA 98501

Steve Fuchs, WSDOT Project Manager
Washington State Department of Transportation
150 Israel Rd SW, FL 4
Tumwater, WA 98501



CITY OF PUYALLUP

Parks and Recreation Department
808 Valley Ave. NW
Puyallup, WA 98371

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FEB 13 2006

253/841-5457
Fax 253/770-8369

February 10, 2006

Tom Whitney
Acting Environmental and Hydraulic Manager
Olympic Region, WSDOT
150 Israel Road SW
PO Box 47417
Olympia, WA 98504-7417

RE: SR 167, Puyallup to SR 509, Tier II EIS

Dear Mr. Whitney:

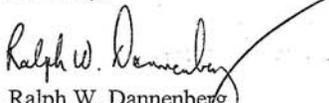
On February 1, 2006 Dick Weber, our Recreation Manager, met with Lone Moody and Jim Laughlin from WSDOT to discuss future noise impacts from the proposed SR 167 Extension Project to the City's Recreation Center. At this meeting, WSDOT acknowledged that the proposed SR 167 Extension project would cause an increase in noise over the existing noise levels at our Recreation Center.

It was explained to Dick that traffic noise does not interfere with normal conversation below the 67 dBA level. Except for a few outfielders on the ballfield closest to the proposed roadway, most of our facility would experience noise levels in the 62 to 63 dBA range. People in the center of the ballfields and in the park and playground area would be able to carry on a normal conversation without raising their voices.

Based on this information, we have determined that future noise from the proposed SR 167 Extension project will not substantially impair the activities at our Recreation Center.

Please feel free to contact me at 253-841-5516 or Dick Weber at 253-841-5517 if you have any questions.

Sincerely,


Ralph W. Dannenberg
Director of Parks and Recreation

cc: Jim Bacon, City Manager



Washington State
Department of Transportation
Douglas B. MacDonald
Secretary of Transportation

Olympic Region
Environmental and Hydraulic Services Office
150 Israel Road SW, Fl 4, Tumwater
PO Box 47417
Olympia, WA 98504-7417
360-570-6700 / Fax 360-570-6697
TTY: 1-800-833-6388
www.wsdot.wa.gov

February 23, 2005 *

National Park Service
Pacific West Region
Attn: Kelly Powell
909 First Avenue
Seattle, WA 98104

RE: SR 167, Puyallup to SR 509, Tier II EIS
Draft 4(f) Analysis – Response to Comments

Dear Ms. Powell:

Thank you for your comments on the draft 4(f) Analysis for the SR 167 Puyallup to SR 509 project. In your letter you raise concerns about possible constructive use of the Puyallup Recreation Center due to noise impacts. Based on your comments, we did additional noise modeling at the Puyallup Recreation Center to get a better understanding of the future impacts to this facility.

The results of the additional noise analysis shows that, except for a few outfielders on the ball field closest to the proposed roadway, most of the Recreation facility would experience noise levels in the 62 to 63 dBA range. This is below WSDOT and FHWA's noise impact criteria of 66 dBA. The noise level increase from the existing 52 dBA to the future 62 to 63 dBA range is still considered a substantial increase. We evaluated a noise wall for the Recreation Center, which was found to be feasible but not reasonable.

Most users of the facility will experience noise levels well below 67 dBA. Placing a noise wall along WSDOT right-of-way will not benefit the majority of the users who are more than 300-400 feet away from the roadway. Traffic noise below 67 dBA does not interfere with normal conversation. Therefore users of the facility in the center of the ball fields and in the park and playground area would be able to carry on a normal conversation without raising their voices.

We met with the Recreation Center Manager on February 1, 2006 to present the results of our noise study and discuss impacts. We asked him to let us know how the noise impacts we presented would affect the Recreation Center activities. He did not feel that the future traffic noise would affect their activities at all. On February 10, 2006 the City of Puyallup Parks and Recreation Department sent us a letter stating that the future roadway noise will not substantially impair the activities at their Recreation Center.

For the reasons stated above we do not feel there is a constructive 4(f) use, due to increased noise, at the Puyallup Recreation Center.

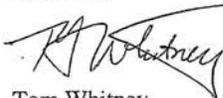
* Please note the year of the letter is 2006, not 2005.

Kelly Powell
February 23, 2006
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I have attached the additional noise analysis report, and a copy of the letter from the City of Puyallup for your information. It is our intent to revise the 4(f) analysis to include this new information. We will make appropriate revisions to the document currently incorporated as Chapter 5 in the pFEIS. Your comments to the draft 4(f) and our response will be part of the FEIS.

Let us know if you would be interested in meeting to go over these results and to discuss the project in general. You can contact me at (360) 570-6702.

Sincerely,



Tom Whitney
Acting Environmental & Hydraulic Manager
Olympic Region

TFW:lhlm

Enclosures:

1. Additional Noise Analysis for the Puyallup Recreation Center, dated 11/29/2005
2. City of Puyallup letter, dated 02/10/2006
3. Oct.24, 2005, Willie Taylor, DOI comment letter, dated 10/24/2005

cc: Willie Taylor DOI, w/enclosures
Steve Fuchs w/enclosures
Megan Hall w/enclosures
Phil Kaulzloric w/enclosures
Project File w/enclosures
SF0223006(3509)

From: Kelly_Powell@nps.gov [mailto:Kelly_Powell@nps.gov]
Sent: Wednesday, October 25, 2006 2:13 PM
To: Love, Sharon; Hall, Megan
Subject: SR 167

Hi, Sharon and Megan,

Sharon, I'm not sure if you're about to head out the door, but thought I'd try to get this email out as soon as possible. I apologize, but I do not have any notes from our meeting. However, I received a letter dated February 23, 2005, from WSDOT (Tom Whitney), which stated that it did not feel there was a constructive use after performing additional noise modeling (most of the recreation facility would experience noise levels below FHWA's criteria of 66dBA).

Pursuant to our meeting and pursuant to WSDOT's letter, I agree that there is not a constructive use. If you would like an official letter from our Deputy Regional Director, please let me know. Also, if you would like a copy of the WSDOT letter, please let me know. Thanks!

-Kelly

Kelly Powell
Environmental Compliance Specialist &
Legal Instruments Examiner
National Park Service
168 S Jackson St
Seattle, WA 98104
206-220-4106
206-447-4246 (fax)
kelly_powell@nps.gov

**DRAFT MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE WASHINGTON
STATE HISTORIC PRESERVATION OFFICE PURSUANT TO 36 CFR Part 800.6(a)**

WHEREAS, the US Department of Transportation, Federal Highway Administration (FHWA) has provided financial assistance to the Washington State Department of Transportation (WSDOT) for completion of SR 167 freeway between SR 161 (North Meridian) in Puyallup and SR 509 freeway in Tacoma, located in Pierce County, Washington, Federal Aid Project No. STPUL-0167(026); and

WHEREAS, WSDOT has completed a cultural resources survey in the area of potential affect as follows:

- Historic Property inventory/evaluation within a 400 foot offset on either side of the centerline established in the Environmental Impact Statement (EIS) process; and
- Cultural Resources ground survey within a 200 foot offset on either side of the centerline established in the EIS process and any additional right of way required for actual construction including interchanges, stormwater facilities, mitigation sites, and Park & Ride facilities. Subsurface testing was performed in areas as determined by a geomorphologist; and
- Consultation on Traditional Cultural Properties with the Puyallup Tribe of Indians (Tribe).

WHEREAS, FHWA has determined, and the State Historic Preservation Office (SHPO) has concurred, that the SR 167 Puyallup to SR 509 project (the undertaking) will have an adverse effect upon the following properties determined to be eligible for inclusion in the National Register of Historic Places:

- Bungalow at 7001 20th Street East (OAHP #27-4125, WSDOT #P202)
- Bungalow at 6803 20th Street East (OAHP #27-4154, WSDOT #P168)
- Bungalow at 7717 Valley Ave. East (OAHP #27-4114, WSDOT #P239)
- Bungalow at 3423 Freeman Rd. (OAHP #27-4160, WSDOT #P490)

WHEREAS, FHWA has determined, and the State Historic Preservation Office (SHPO) has concurred, that the SR 167 Puyallup to SR 509 project (the undertaking) will not have an adverse effect upon the archeological site, prehistoric site 45PI488, determined to be eligible for inclusion in the National Register of Historic Places; and

WHEREAS, FHWA has notified the Advisory Council on Historic Preservation (ACHP) of the effects pursuant to 36 CFR Part 800.6(a)(i), regulations effective January 11, 2001, implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the Advisory Council has declined to participate, but requests that pursuant to 36 CFR 800.6(b)(iv), a Memorandum of Agreement (Agreement), be developed in consultation with the SHPO, and related documentation be filed with the ACHP at the conclusion of the consultation process; and

WHEREAS, a Department of the Army permit, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, will be required from the United States Army Corps of Engineers, Seattle District, (COE), to conduct activities related to the construction of SR 167, Puyallup to SR 509, and has been invited to be a signatory to this agreement; and

WHEREAS, the Washington State Department of Transportation (WSDOT) participated in the consultation and has been invited to be a signatory to this agreement; and

WHEREAS, formal Section 106 consultation pursuant to 36 CFR 800.2(a)(4) was initiated with the Puyallup Tribe in 2000. The Tribe then designated the Tribal Historic Official and the Cultural Resources Technical Advisor as lead contacts for the Tribe on cultural resource-related matters involving WSDOT and/or the FHWA. The Tribe has participated in the consultation and has been invited to be a signatory to this agreement; and

NOW, THEREFORE, the FHWA, COE, WSDOT, Puyallup Tribe, and the Washington 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.

STIPULATIONS

The FHWA will ensure that the following measures are carried out:

- 1) To minimize visual effects, WSDOT will plant riparian vegetation on the outer edges of the proposed ramp curve nearest the 3423 Freeman Road historic property.
- 2) Historic Property Recordation:
WSDOT will consult with the SHPO regarding appropriate large-format photo documentation to consistent with OAHF Level 2 standards of historic properties, 700120th Street East, 6803 20th Street East, and 7717 Valley Avenue East, in the project's area of potential effect.
- 3) NRHP-eligible buildings as described in 2, above, will be offered for sale for a minimum of one year to any buyers willing to move the structures.
- 4) The project will have no adverse effect upon prehistoric site 45PI488, contingent upon WSDOT:
 - a) Spanning the site with a bridge whose piers are constructed outside the known boundaries of the site; and
 - b) Monitoring construction for cultural resources in the vicinity. Should cultural resources or human remains be discovered during bridge construction, procedures will be followed per below (items 5 and 6).
- 5) Review of Effects Determination:
Because design has yet to be finalized and because construction may not occur for some time, during final design and prior to construction of the undertaking, FHWA will review the eligibility determinations to:
 - a) Determine if eligible properties retain the qualities that make them eligible for the National Register of Historic Places; and
 - b) Determine if non-eligible properties obtained qualities that would make them eligible for the National Register of Historic Places (i.e. greater than 50 years old).
- 6) Amendment of the Agreement:
If any of the signatories to this Agreement determine that the terms of the Agreement cannot be met or believe a change is necessary, that signatory will immediately request the signatory parties to consider an amendment or addendum which will be executed in the same manner as the original Agreement. A copy of the amended Agreement will be filed with the ACHP, pursuant to 36 CFR 800.6(c)(7).
- 7) Dispute Resolution:

- a) If a dispute arises regarding implementation of this Agreement, the signatory parties will consult with the objecting party to resolve the dispute. If FHWA determines that the dispute cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the ACHP and request comment, which will be provided pursuant to 36 CFR 800.6(b).
- b) If at any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the FHWA shall take the objection into account and consult as needed with the objecting party, the SHPO, or the ACHP to resolve the objection.

8) Failure to Carry Out Terms:

Failure to carry out the terms of this Agreement requires that FHWA again request the ACHP's comments in accordance with 36 CFR Part 800.7. If FHWA cannot carry out the terms of the Agreement: (i) it will not take or sanction any action to make an irreversible commitment that would result in an adverse effect with respect to the eligible property covered by the Agreement; (ii) nor will FHWA foreclose the ACHP's consideration of modifications or alternatives that could avoid or mitigate the adverse effect on the property until the commenting process has been completed.

9) Duration & Termination:

This MOA will take effect immediately upon execution by the Signatory Parties. The terms of this MOA shall be satisfactorily fulfilled within ten years following the date of execution. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the agreement and propose its amendment. Unless terminated, this MOA will be in effect until FHWA, in consultation with SHPO, COE, WSDOT, and the Tribe, determines that all of its terms have been satisfactorily fulfilled within ten years.

In accordance with 36 CFR 800.6(c)(8), if any of the Signatory Parties determines that the terms of the MOA cannot or are not being carried out, they may consult to seek an amendment of the Agreement. If the Agreement is not amended, any Signatory may terminate this MOA. If either FHWA, COE, or the SHPO proposes to terminate this MOA, the terminating party shall promptly notify all other parties in writing of the proposed termination and shall include in its notification the reasons for proposing termination. If the MOA is terminated pursuant to this stipulation and FHWA determines that its undertaking will nonetheless proceed, FHWA shall request the comments of the ACHP.

10) Monitoring and Reporting:

Within 90 Days after carrying out the terms of the Agreement, as described in Stipulations 1 through 4, the WSDOT shall report to all signatories on the actions taken.

This Memorandum of Agreement by the FHWA and the Washington SHPO, shall not be executed until filed with the ACHP, evidence that the FHWA has afforded the ACHP an opportunity to comment on the SR 167 Puyallup to SR 509 Highway Project and its effects on historic properties. Implementation of its terms is evidence that the FHWA has taken into account its effects on historic properties and has satisfied the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)).

SIGNATORIES

Federal Highway Administration

By: _____
Daniel Mathis
Division Administrator

Date: _____

Washington State Historic Preservation Office

By: _____
Allyson Brooks, Ph.D.
State Historic Preservation Officer

Date: _____

INVITED CONCURRING PARTIES

Washington State Department of Transportation

By: _____
Tom Whitney
Acting Region Environmental & Hydraulic Manager
Olympic Region

Date: _____

The Puyallup Tribe of Indians

By: _____
Herman Dillon, Sr.
Puyallup Tribal Council Chair

Date: _____

US Army Corps of Engineers

By: _____
COE Debra Lewis
District Engineer

Date: _____

Attachments:

- 1) SR 167 Vicinity Map