

Hugo Neighborhood Association & Historical Society

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October 15, 2012 Email/Letter

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Reference: "I-5: Glendale – Hugo Paving/Sexton Climbing Lane Project" (*Project*) Section 106 Process & 36 CFR Sections 800.4(d)(1) and 800.11(d);
ODOT Key No. 16763, ODOT EA PE001659/Federal-Aid No. S001(349)PE

Dear Milford, Chris, and James:

Thank you for this opportunity to provide our view on the proposed Section 106 Process "*Finding of No Historic Properties Affected*" for the *Project*. In this case our substantive issues of the *Project's* Section 106 Process are three: 1. historic properties of potential significance to Indian Tribes (i.e., a Lowland Takelma Indian Trail and a Medicine Woman's spirit embodied as Rock Old Woman at Sexton Mountain Pass), 2. the original location of a 1,060' segment of the Applegate Trail/Road (i.e., Class ① Unaltered Trail/Class ② Used Trail) at Sexton Mountain Pass as a historic property believed to be eligible for the National Register of Historic Places, and 3. view that an environmental assessment versus a categorical exclusion is the required National Environmental Policy Act analysis instrument for the undertaking. The significant process issues for the Section 106 Process are three: 1. inadequate implementation of the regulations promoting public involvement by responsible agencies, 2. lack of an opportunity to be heard in the sense that a Section 106 Consulting Party's historical property issues should be analyzed, considered, and publicly documented before being deemed "*not sufficient*" with a couple of conclusory

statements, and 3. inadequate to no public record documentation of required Section 106 Process inventory and analysis steps.

The National Historic Preservation Act's (NHPA) Section 106 Process appears well designed to facilitate meaningful public participation with its substantial public involvement, inventory and procedures, and standards. In our view, the problem is the implementation of the Section 106 Process per its standards. As one example, of many identified in the attached paper (Attachment One), is the issue that the Federal Highway Administration (FHWA), the Oregon Department of Transportation (ODOT), and the Oregon State Historic Preservation Office (SHPO) failed in their obligations to protect historic properties by complying with NHPA's Section 106 Process. This failure is the root of many of the HNA&HS's issues. For example, our observation is that the agencies' written public record was to, in effect, bypass completing some of the required historic properties inventory and analysis steps prior to § 800.4 (d)(1) and its § 800.11(d) "*Finding of No Historic Properties Affected*", and/or not documenting them in the finding.

We feel that Federal Advisory Council on Historic Preservation's (ACHP) involvement in reviewing the findings and documentation for the *Project* could improve the operation of the Section 106 Process for future FHWA's projects. We believe there is a pattern of compliance failure with the Section 106 Process by SHPO, ODOT, and FHWA. If our significantly adverse Section 106 Party experience of non-compliance in the Section 106 Process is not limited to this project, and we do not believe it is, an evaluation of the Section 106 Process by ACHP could lead to improving the efficiency and effectiveness of the process around the State of Oregon.

We do not expect our issues to be resolved by SHPO, ODOT or FHWA, and to save time and money we refer this matter directly to ACHP for its opinion because it may evaluate the operation of the Section 106 Process of how participants have fulfilled their legal responsibilities, and how effectively the outcomes reached advance the purposes of NHPA (Appendix A to 36 CFR Part 800). Our rationale for why the ACHP should enter the process is in Section VII of Attachment One. It and other documentation applicable to the *Project* are web published under the title "*ODOT'S I-5: Glendale to Hugo Paving & Sexton Climbing Lane Project*" (http://www.hugoneighborhood.org/miscellaneous_research_papers_and_documents.htm).

Thank you in advance for any assistance you can provide.

Sincerely,

Mike :)

/s/ Mike Walker

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Mike Walker, Member, Hugo Native American Team &
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Hugo Neighborhood Association & Historical Society

Attachment One Paper “*Why ACHP Should Review The I-5: Glendale – Hugo Paving/Sexton Climbing Lane Project Section 106 Process*”

Email copies:

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- Jean Boling, Historic Sites Chair
Josephine County Historical Society
- Chris Bucher, Operations Engineer
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- James Collins, Region 3 Environmental Manager
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- Milford Wayne Donaldson, Chairman
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