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REPLY TO:
☒ ROSEVILLE ☐ ONTARIO
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December 12, 2013

Sean Rabé
City Manager
City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

Re: Expenditure of Relinquishment Funds

Dear Sean:

This letter is intended to update my January 23, 2013 letter to you in which I discussed the City's acceptance of relinquishment funds regarding the portion of former Highway 49 the California Department of Transportation ("Caltrans") abandoned in 2003. As I noted in that previous letter, the legal effect of the City's acceptance of the \$3,049,600 in relinquishment funds per the March 2003 Relinquishment Agreement was to shift legal liability and responsibility for maintenance of the relinquished road from Caltrans to the City. The Agreement, executed under Streets & Highways Code section 73, did not obligate the City to use the relinquished funds in any particular way, or strictly for road and bridge maintenance purposes.

On November 12, 2013, you provided me a memorandum that described a number of the historic records you found in City files concerning the Relinquishment Agreement. In my opinion, these confirm the position stated in my January 23, 2013 letter. Specifically, the records you provided include a Caltrans Report of Consensus Highway 49 Expressway Relinquishment, which plainly stated:

"Caltrans has confirmed that funds provided to the Cities and County for relinquishment (Exhibit B-1) *are not obligated to be spent on maintenance of old State Route 49*. If the Cities can maintain old State 49 after the Expressway is constructed for less than the amount of funding obtained through the relinquishment agreement, then the Cities and County are free to spend the savings on other purposes." (Item No. 9, emphasis added.)

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The other records you discuss also confirm the interpretation that relinquishment funds are not restricted. These indicate that Caltrans agreed the City could expend money it saved on bridge reconstruction for other City purposes and that the City's acceptance of the relinquished funds would not preclude the City from accepting federal funding under the Highway Bridge Rehabilitation and Reconstruction Program. If the law had precluded the City from expending relinquishment funds on purposes other than Highway 49 maintenance or bridge reconstruction, Caltrans would not have made these representations.

The City's Finance Director, Joe Aquilar, has also forwarded me a copy of a restated position regarding the accounting for the moneys received from Caltrans under the 2003 Relinquishment Agreement. This restated position is consistent with authorities I previously reviewed and discussed, as well as the historic records mentioned above.

In sum, because of the clear language of historic records in the City's possession, together with the absence of any express language in Streets & Highways Code section 73 or the 2003 Relinquishment Agreement restricting the use of relinquished funds, I reiterate my office's previous conclusion regarding this issue. While the City became responsible for liability and maintenance of the relinquished portion of Highway 49 and bridge, no restrictions were placed on how the City must expend the \$3,049,600 in relinquishment funds it received.

Please let me know if you have any questions or would like me to elaborate on any point I have raised.

Sincerely,



Derek P. Cole
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