

Appendix F Agency Concurrence / Correspondence



United States
Department of
Agriculture

Forest
Service

Lake Tahoe Basin Management
Unit

35 College Drive
South Lake Tahoe, CA 96150
(530) 543-2600

File Code: 2360-3

Date: October 12, 2007

Jody Brown
Chief, Office of Program Project Management S3
Caltrans, District 3
Office of Environmental Management
2800 Gateway Oaks Drive
Sacramento, CA 95833

Re: Finding of Effects and Draft Memorandum of Agreement, Proposed U.S. Highway 50 Improvement Project, Echo Summit, El Dorado County, CA; TB-2007-051, R2007051900089.

Dear Ms. Brown:

In response to your letter dated September 26, 2007 regarding your Finding of Effects and Draft Memorandum of Agreement (DMOA) for the proposed rock wall barriers replacement project at Upper Meyers Grade, U.S. Highway 50 at Echo Summit, Lake Tahoe Basin Management Unit's (LTBMU) Heritage Resources Program has reviewed this documentation. Based on this review, it is my opinion that Caltrans has appropriately assessed the affects the proposed undertaking will have on the Upper Meyers Grade, a property determined eligible for inclusion in the National Register of Historic Places (NRHP).

Furthermore, I believe that Caltrans has developed appropriate mitigative measures for the Upper Meyers Grade, as reflected in the DMOA, for the proposed project. Upon finalization of the Memorandum of Agreement, please forward the document to the LTBMU for my concurrence. I appreciate the opportunity to be of assistance to Caltrans in this proposed undertaking.

If you have any questions or need additional information, please contact Michael Weichman, Assistant Heritage Resources Program Manager, at (530) 543-2678.

Sincerely,

TERRI MARCERON
Forest Supervisor

cc: Heritage Resources



**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



October 24, 2007

Reply To: FHWA070712A

Gregory P. King, Chief
Cultural and Community Studies Office
Division of Environmental Analysis
Department of Transportation
PO Box 942874
Sacramento, CA 94274-0001

Re: Finding of Effect for the Proposed Improvements at Echo Summit, Highway 50, El Dorado County, CA

Dear Mr. King:

Thank you for consulting with me about the subject undertaking in accordance with the *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California (PA)*.

The Federal Highway Administration (FHWA) is requesting my concurrence that the proposed project will have an adverse effect on historic properties, specifically the Upper Meyers Grade, a property previously determined eligible for the National Register of Historic Places under Criterion C at the state level of significance. Based on my review of the submitted documentation I concur.

Please consider these comments to be my comments under Public Resources Code 5024.5 as well. The Memorandum of Agreement written for this document in order to satisfy 36 CFR Part 800 will constitute prudent and feasible measures under 5024.5.

Thank you for considering historic properties as part of your project planning. If you have any questions, please contact Natalie Lindquist of my staff at your earliest convenience at (916) 654-0631 or e-mail at nlindquist@parks.ca.gov or Dwight Dutschke at (916) 653-9134 or ddutschke@parks.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Susan K Stratton for".

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer



Preserving America's Heritage

August 1, 2008

Gregory P. King, Chief
Cultural and Community Studies Office
Division of Environmental Analysis
Department of Transportation
1120 N Street
P.O. Box 942874
Sacramento, CA 94274-0001

**REF: *Proposed Echo Summit Improvement Project on U.S. Highway 50
El Dorado County, California***

Dear Mr. King:

On July 31, 2008, the Advisory Council on Historic Preservation (ACHP) received the Memorandum of Agreement (MOA) for the above referenced project. In accordance with Section 800.6(b)(1)(iv) of the ACHP's regulations, the ACHP acknowledges receipt of the MOA. The filing of the MOA, and execution of its terms, completes the requirements of Section 106 of the National Historic Preservation Act and the ACHP's regulations.

We appreciate your providing us with a copy of this MOA and will retain it for inclusion in our records regarding this project. Should you have any questions or require additional assistance, please contact me at (202) 606-8509 or ljohnson@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Federal Permitting, Licensing and Assistance Section
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

Appendix G Memorandum of Agreement

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CALIFORNIA DEPARTMENT OF TRANSPORTATION,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
THE UNITED STATES FOREST SERVICE
REGARDING THE PROPOSED IMPROVEMENT PROJECT
AT ECHO SUMMIT,
U.S. HIGHWAY 50, EL DORADO COUNTY, CALIFORNIA**

WHEREAS, the Federal Highway Administration (FHWA) has assigned and the California Department of Transportation (Caltrans) has assumed FHWA responsibility for environmental review, consultation, and coordination under the provisions of the *Memorandum of Understanding (MOU) between the Federal Highway Administration and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program*, which became effective on July 1, 2007 and applies to this project; and,

WHEREAS, the United States Forest Service (USFS) is the legal owner of the land underlying U.S. Highway 50 in the project area; and,

WHEREAS, the USFS, Lake Tahoe Basin Management Unit, has agreed that Caltrans will be the lead agency for compliance with the National Environmental Policy Act (NEPA), in accordance with the terms of the aforementioned MOU; and,

WHEREAS, Caltrans has determined that the proposed improvement project on U. S. Highway 50 (U.S. 50) between post miles 66.6 and 67.8 at Echo Summit, El Dorado County, California (Undertaking), will have an adverse effect on Upper Meyers Grade (historic property), which Caltrans has determined in consultation with the State Historic Preservation Officer (SHPO) to be eligible for inclusion in the National Register of Historic Places (National Register) and therefore historic properties as defined at 36 CFR§ 800.16(1)(1); and,

WHEREAS, Caltrans has consulted with the SHPO pursuant to Stipulations X.C.1 and XI of the January 2004 *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation regarding compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California* (PA), and, where the PA so directs, in accordance with 36 CFR Part 800, the regulation that implements Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as amended (NHPA), regarding the Undertaking's effect on historic properties, and has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding pursuant to 36 CFR§ 800.6(a)(1); and,

WHEREAS, Caltrans has thoroughly considered alternatives to the Undertaking, has determined that statutory and regulatory constraints on the design of the Undertaking preclude the possibility

of avoiding effects to the historic property during the Undertaking's implementation, and has further determined that it will resolve adverse effects of the undertaking on the subject historic property through the execution and implementation of this Memorandum of Agreement (MOA); and,

WHEREAS, Caltrans District 3 (District 3) and the United States Department of Agriculture – Forest Service, Lake Tahoe Basin Management Unit have participated in the consultation and have been invited to concur in this MOA;

NOW, THEREFORE, Caltrans and the SHPO agree that, upon Caltrans' decision to proceed with the Undertaking, Caltrans shall ensure that the Undertaking is implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

Caltrans shall ensure that the following measures are carried out:

I. AREA OF POTENTIAL EFFECTS

- A.** The Area of Potential Effects (APE) for the Undertaking is depicted in Figure 3 of the *Finding of Effect for Proposed Improvement at Echo Summit, U.S. Highway 50, El Dorado County, California* (September 2007). The APE was established to include all cultural resources that would be directly or indirectly affected by the Undertaking. The APE includes the existing highway right-of-way between post miles 66.6 and 67.8. Julia Green, District 3 Professionally Qualified Staff and Ali Kiani, Project Manager, approved the APE map on July 3, 2007
- B.** If modifications to the Undertaking, subsequent to the execution of this MOA necessitate the revision of the APE, Caltrans will consult with District 3, the SHPO, and the USFS to facilitate mutual agreement on the subject revisions. If Caltrans, District 3, the SHPO, and the USFS cannot reach such agreement, then the parties of this MOA shall resolve the dispute in accordance with Stipulation IV.B below. If Caltrans, District 3, the SHPO, and the USFS reach mutual agreement on the proposed revisions, then Caltrans will submit a final map of the revisions, consistent with the requirements of stipulations VIII.A and XVI.A of the PA, no later than 30 days following such agreement.

II. TREATMENT OF HISTORIC PROPETIES

A. Design of New Concrete Barriers

- 1. The new concrete barriers will closely resemble the appearance of the existing rock wall parapets in color and texture. Molds of intact portions of the existing structure will be used to form the concrete barriers. Stains and/or dyes will be used on the concrete to

imitate the color of the existing stone. The outboard side of the new barrier will be vertical and flush with the existing surface of the rock retaining wall. In addition to materials, the concrete barrier will differ from the existing parapet, as follows:

- a. The shape of the inboard side will slope slightly, narrowing at the top; and,
- b. The relief of the textured concrete surface will be limited to 5/8 of an inch to achieve safety standards.

2. Signatory parties will have the opportunity to review and approve a prototype wall.

B. Replacement of Cross Culverts through Rock Retaining Walls

If Caltrans determines that replacement, rather relining, of the culverts is required, Caltrans will ensure that the contractor reuses the original materials to rebuild the wall to match its current appearance.

III. DISCOVERIES AND UNANTICIPATED EFFECTS

If Caltrans determines after construction of the Undertaking has commenced that the Undertaking will affect a previously unidentified property that may be eligible for the National Register, or affect a known historic property in an unanticipated manner, Caltrans will address the discovery or unanticipated effect in accordance with 36 CFR § 800.13(b)(3). Caltrans at its discretion may hereunder assume any discovered property to be eligible for inclusion in the National Register in accordance with 36 CFR § 800.13(c).

IV. ADMINISTRATIVE STIPULATIONS

A. Standards

1. **Professional Qualifications.** All activities prescribed by stipulations I, II, III, IV and V of this MOA shall be carried out under the authority of Caltrans by or under the direct supervision of a person or persons meeting at a minimum the Secretary of Interior's Standards *Professional Qualifications Standards* (48 FR 44738-39, September 29, 1983) (PQS) in the appropriate disciplines. However, nothing in this stipulation may be interpreted to preclude Caltrans or any agent or contractor thereof from using the properly supervised services of persons who do not meet the PQS.
2. **Historic Preservation Standards.** Written documentation of activities prescribed by stipulations I, II, III, IV and V of this MOA shall conform to the *Secretary of the Interior's Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740) as well as applicable standards and guidelines established by the SHPO.

B. Resolving Objections

1. Should any MOA party object to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to implementation of the MOA (other than the Undertaking itself), or to any documentation prepared in accordance with and subject to the terms of this MOA, Caltrans shall immediately notify the other MOA parties of the objection and consult with the objecting party and the other parties to this MOA for no more than 14 days to resolve the objection. Caltrans shall reasonably determine when this consultation will commence and may extend this consultation period. If the objection is resolved through such consultation, the action in dispute may proceed in accordance with the terms of that resolution. If, after initiating such consultation, Caltrans determines that the objection cannot be resolved through consultation, then Caltrans shall forward all documentation relevant to the objection to the ACHP, including Caltrans' proposed response to the objection, with the expectation that the ACHP will, within thirty (30) days after receipt of such documentation:
 - a. advise Caltrans that the ACHP concurs in Caltrans' proposed response to the objection, whereupon Caltrans will respond to the objection accordingly. The objection shall thereby be resolved; or,
 - b. provide Caltrans with recommendations, which Caltrans will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or,
 - c. notify Caltrans that the objection will be referred for comment pursuant to 36 CFR §800.7(c), and proceed to refer the objection and comment. Caltrans shall take the resulting comments into account in accordance with 36 CFR § 800.7(c)(4) and Section 110(1) of the NHPA. The objection shall thereby be resolved.
2. Should the ACHP not exercise one of the aforementioned options within 30 days after receipt of all pertinent documentation, Caltrans may assume the ACHP's concurrence in its proposed response to the objection. The objection shall thereby be resolved.
3. Caltrans shall take into account any ACHP recommendation or comment provided in accordance with section B.1 of this stipulation with reference only to the subject of the objection. Caltrans' responsibility to carry out all actions under this MOA that are not the subject of the objection will remain unchanged.
4. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to such implementation be raised by a member of the public, Caltrans shall notify the MOA parties in writing of the objection and take the objection into consideration. Caltrans shall consult with the objecting party and, if the objecting party so requests, with the other MOA parties for no more than fifteen

(15) days. Within ten (10) days following closure of this consultation period, Caltrans will render a decision regarding the objection and notify all consulting parties of its decision in writing. The objection will thereby be resolved. In reaching its decision, Caltrans will take into account any comments from the consulting parties regarding the objection, including the objecting party. Caltrans' decision regarding the resolution of the objection will be final.

5. Caltrans shall provide all MOA parties, the ACHP, when the ACHP has issued comments hereunder, and any parties that have objected pursuant to section C.4 of this stipulation with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.
6. Caltrans may authorize any action subject to objection under section B of this stipulation to proceed after the objection has been resolved in accordance with the terms of section B.

C. Amendments

Any MOA party may propose that this MOA be amended, whereupon the MOA parties will consult for no more than 30 days to consider such amendment. Caltrans may extend this consultation period. The amendment process shall comply with 36 CFR §800.6(c)(1) and 800.6(c)(7). This MOA may be amended only upon the written agreement of the signatory parties. If it is not amended, this MOA may be terminated by either signatory party in accordance with section D of this stipulation.

D. Termination

1. If this MOA is not amended as provided for in section C of this stipulation, or if either signatory party proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other MOA parties, explain the reasons for proposing termination, and consult with the other parties for at least 30 days to seek alternatives to termination. Such consultation shall not be required if Caltrans proposes termination because the Undertaking no longer meets the definition set forth in 36 CFR § 800.16(y).
2. Should such consultation result in an agreement on an alternative to termination, then the MOA parties shall proceed in accordance with the terms of that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other MOA parties. Termination hereunder shall render this MOA without further force or effect.
4. If this MOA is terminated hereunder, and if Caltrans determines that the Undertaking will nonetheless proceed, then Caltrans shall comply with the requirements of 36 CFR 800.3-800.6.

E. Duration of the MOA

1. Unless terminated pursuant to section D of this stipulation, or unless superceded by an amended MOA, this MOA will be in effect following execution by the signatory parties until Caltrans, in consultation with the other MOA parties, determines that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have no further force or effect on the day that Caltrans notifies the other MOA parties in writing of its determination that all stipulations of this MOA have been satisfactorily fulfilled.
2. The terms of this MOA shall be satisfactorily fulfilled within six (6) years following the date of execution by the signatory parties. If Caltrans determines that this requirement cannot be met, the MOA parties will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, Caltrans will comply with section D.4 of this stipulation if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
3. If the Undertaking has not been implemented within six (6) years following execution of this MOA by the signatory parties, this MOA shall automatically terminate and have no further force or effect. In such event, Caltrans shall notify the other MOA parties in writing and, if it chooses to continue with the Undertaking, shall reinstate review of the Undertaking in accordance with 36 CFR Part 800.

F. Effective Date

This MOA will take effect on the date that it has been executed by Caltrans and the SHPO.

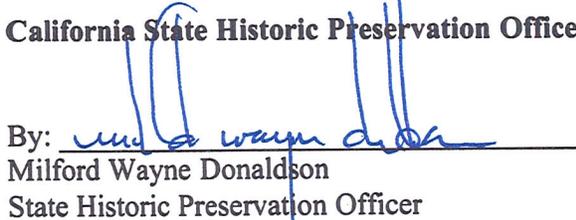
EXECUTION of this MOA by Caltrans, the SHPO, and the USFS, its transmittal by Caltrans to the ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent implementation of its terms, shall evidence, pursuant to 36 CFR § 800.6(c), that this MOA is an agreement with the ACHP for purposes of Section 110(1) of the NHPA and shall further evidence that Caltrans has afforded the ACHP an opportunity to comment on the Undertaking and its effect on historic properties, and that Caltrans has taken into account the effects of the undertaking on historic properties.

SIGNATORY PARTIES:

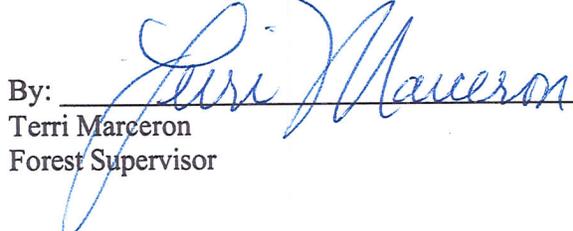
California Department of Transportation

By:  Date: 7/10/08
Jay Norvell, Chief
Division of Environmental Analysis

California State Historic Preservation Officer

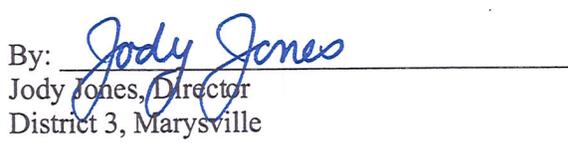
By:  Date: 15 JUL 2008
Milford Wayne Donaldson
State Historic Preservation Officer

United States Forest Service, Lake Tahoe Basin Management Unit

By:  Date: 7-3-08
Terri Marceron
Forest Supervisor

CONCURRING PARTY:

California Department of Transportation

By:  Date: 7/17/08
Jody Jones, Director
District 3, Marysville