

MEMORANDUM OF AGREEMENT
Between the Federal Highway Administration
And the
California State Historic Preservation Officer
Regarding the Replacement of a Masonry Parapet Guardrail
On State Route 89 near Emerald Bay, El Dorado County, California

WHEREAS, the Federal Highway Administration (FHWA), in cooperation with the California Department of Transportation, proposes to replace a masonry parapet guardrail on State Route 89 in El Dorado County (undertaking), at post miles 16.65 to 16.74, with a concrete barrier; and

WHEREAS, the masonry parapet guardrail on State Route 89 is part of a grouping of masonry features at Emerald Bay that have been determined to be eligible for the National Register of Historic Places (historic property); and

WHEREAS, the undertaking will have an adverse effect on the historic property; and

WHEREAS, the FHWA has consulted with the California State Historic Preservation Officer (SHPO) and notified the Advisory Council on Historic Preservation (ACHP) of the effect finding pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f); and

WHEREAS, the California Department of Transportation has participated in the consultation and has been invited to concur in this Memorandum of Agreement (MOA);

NOW, THEREFORE, the FHWA and the SHPO agree that the undertaking shall be 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

The FHWA shall ensure that the following stipulations are implemented:

I. Design of the new concrete barrier

The design of the new concrete barrier will have a textured and colored surface that will closely resemble the existing historic masonry parapet guardrail (HMPG). One or more molds will be cast around intact sections of the HMPG for replication on the new barrier. The new barrier will match the existing HMPG in height (within 1 inch), general shape (including the raised portions at regular intervals), and color; and the outer surface of the barrier will be flush with the

retaining wall below it. However, the new barrier will differ from the HMPG in two respects:

- (1) The relief in the textured surface of the barrier, on the side facing the highway, will be limited to 5/8 of an inch, and
- (2) The side of the barrier facing the highway will not be vertical, but will have a slope of 95 to 100 degrees from the vertical, such that the barrier will be narrower at the top than at the base.

II. Repair of the masonry retaining wall

Material from the HMPG that is to be removed will be re-used to repair a portion of the masonry retaining wall below the HMPG that was previously repaired with rock of sizes and shapes that do not match the rest of the wall. This repaired area will then more closely match the rest of the retaining wall.

III. Unanticipated Discoveries and Effects

If the FHWA determines, after construction has commenced, that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register of Historic Places, or affect a known historic property in an unanticipated manner, the FHWA will address the discovery or unanticipated effect in accordance with 36 CFR § 800.13(b)(3). The FHWA may assume the discovered property to be eligible for the National Register of Historic Properties in accordance with 36 CFR § 800.13(c).

IV. Resolving Objections

1. Should any party to this MOA object at any time, in writing, 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 document prepared in accordance with and subject to the terms of the MOA, the FHWA will immediately notify the other parties of the objection, request their comments on the objection within fifteen (15) days following receipt of the FHWA notification and proceed to consult with the objecting party for no more than thirty (30) days to resolve the objection. The FHWA will honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.
2. If the objection is resolved during the 30-day consultation period, the FHWA may proceed with the disputed action in accordance with the terms of such resolution.
3. If after initiating such consultation, the FHWA determines that the objection cannot be resolved through consultation, the FHWA shall forward all documentation relevant to the objection to the ACHP, including the FHWA

proposed response to the objection, with the expectation that the ACHP will, within thirty (30) days after receipt of such documentation, take one of the following actions:

- a. Advise the FHWA that the ACHP concurs with the FHWA proposed response to the objection; whereupon the FHWA will respond to the objection accordingly;
 - b. Provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding its response to the objection; or
 - c. Notify the FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4) and proceed to refer the objection and comment. The FHWA shall take the resulting comment into account in accordance with 36 CFR § 800.7(a)(4) and Section 110(1) of the National Historic Preservation Act.
4. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.
 5. The FHWA shall take into account any ACHP recommendation or comment, and any comments from other parties to this MOA, in reaching a final decision regarding the objection. The FHWA's responsibility to carry out all actions under this MOA, that are not the subjects of the objection, shall remain unchanged.
 6. The FHWA shall provide the other parties to this MOA and the ACHP, if the ACHP has commented, with a copy of its final written decision regarding any objection raised by another MOA party, pursuant to this stipulation.
 7. 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, the FHWA shall notify the parties to this MOA, in writing, of the objection and take the objection into consideration. The FHWA shall consult with the objecting party and, if the objecting party so requests, with Caltrans and the SHPO for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, the FHWA will render a decision regarding the objection and notify all consulting parties of its decision in writing. In reaching its decision, the FHWA will take into account any comments from the consulting parties, including the objecting party. The FHWA decision regarding the resolution of the objection will be final.
 8. The FHWA 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.

V. Amendments

Any party to this MOA may propose that this MOA be amended, whereupon the parties will consult for no more than thirty (30) days to consider such amendment. 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 this MOA is not amended, it may be terminated by either signatory party in accordance with Stipulation VI.

VI. Termination

1. If this MOA is not amended as provided for in Stipulation V, or if either signatory party proposes termination of this MOA for other reasons, the signatory party proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination and consult with the other parties to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. The timeframe for the consultation herein specified shall be determined by the signatory parties to their mutual satisfaction. Such consultation shall not be required if the FHWA proposes termination because the undertaking no longer meets the definition set forth in 36 CFR § 800.16(y).
2. Should such consultation fail to result in an agreement on an alternative to termination, the signatory party proposing termination may terminate this MOA by promptly notifying the other parties to this MOA, in writing. Termination hereunder shall render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if the FHWA determines that the undertaking will nonetheless proceed, then the FHWA shall either consult in accordance with 36 CFR § 800.6 to develop a new MOA or request the comments of the ACHP, pursuant to 36 CFR Part 800.

VII. Duration of this MOA

1. Unless terminated pursuant to Stipulation VI, or unless superseded by an amended MOA, this MOA will be in effect until the FHWA, in consultation with the other parties to this MOA, determines that all of its stipulations have been satisfactorily fulfilled. Upon a determination by the FHWA that all of the terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and will have no further force or effect. The FHWA will promptly provide the other parties to this MOA with written notice of its determination and of the termination of this MOA. Following provision of such notice, this MOA shall have no further force or effect.
2. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the date of execution by both signatory parties. If the FHWA

determines that this requirement cannot be met, the parties to this MOA will consult to reconsider its terms. Reconsideration may include the continuation of the MOA as originally executed, amended or terminated. In the event of termination, the FHWA will comply with stipulation VI.3, if it determines that the undertaking will proceed, notwithstanding termination of this MOA.

3. If the undertaking has not been completed within five (5) years following execution of this MOA by the signatory parties, this MOA shall automatically terminate and have no further force or effect. In such an event, the FHWA shall notify the other parties in writing; and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

VIII. Effective Date

This MOA will take effect immediately upon execution by both signatory parties.

EXECUTION of this MOA by the FHWA and the SHPO, its transmittal by the FHWA 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(l) of the National Historic Preservation Act, and shall further evidence that the FHWA has afforded the ACHP an opportunity to comment on the undertaking and its effects on historic properties, and that the FHWA has taken into account the effects of the undertaking on historic properties.

Signatory Parties:

FEDERAL HIGHWAY ADMINISTRATION

By: Ell W Day Date: 8/18/2004

Title: Senior Project Development Engineer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Michael Wayne Carter Date: 8/24/2004

Title: State Historic Preservation Officer

Concurring Party:

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: Jody Jones Date: 8/30/2004

Title: District Director