

MINUTE ITEM

This Calendar Item No. 15
was approved as Minute Item
No. 15 by the State Lands
Commission by a vote of 3
to 0 at its 4/25/85
meeting.

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CALENDAR ITEM

15

04/25/85
S-8375
Chatfield
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MEMORANDUM OF AGREEMENT AMONG THE CALIFORNIA
STATE LANDS COMMISSION, THE BUREAU OF LAND MANAGEMENT,
THE ADVISORY COUNCIL OF HISTORIC PRESERVATION AND
THE CALIFORNIA STATE HISTORIC PRESERVATION
OFFICER, FOR LAND TRANSFERS IN CALIFORNIA

Approval of Memorandum of Agreement obligating State Lands
Commission to manage significant cultural resources on lands
received from the Bureau of Land Management by Indemnity
Selection or Exchange. The management shall be pursuant to
Section 106 and 110 of the National Historic Preservation Act
(NHPA) (16 USC 470 and 36 CFR 800). This agreement shall apply
only to lands received during the period of June 30, 1985 to
September 30, 1990.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes there is no possibility that this project may have such an effect.
2. The Commission staff is preparing a series of land exchanges and indemnity selections from BLM for consolidation and enrichment of the school land trust base. The BLM is required by federal law (36 CFR 800 et seq.) to be responsible for cultural resource protection on its lands. This responsibility would not cease with

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transfer of lands containing such cultural resources to another party, without the approval of the Advisory Council for Historic Preservation and State Historic Preservation Office.

Therefore, to conclude anymore land acquisitions from BLM, a programmatic Memorandum of Agreement is necessary, assuring them that the resources will be adequately managed by the state as recipient. In this case, the State must agree to manage these resources, if any exist on the land acquired from BLM, in a manner comparable to that practiced by BLM.

The federal level of cultural resource management is in the staff's opinion a workable and reasonable one for the state. State guidelines for handling cultural resources are not sufficiently different from the federal guidelines that an untenable burden would attend the acquisition of land containing significant cultural resources. In addition, a determined effort is made by staff of BLM, SLC and SHPO to avoid selection of BLM land which may contain sensitive sites.

This Agreement is modeled after a similar one entered into between the Los Angeles Department of Water and Power and BLM last year. It will cover exchanges and indemnity selections from July 1, 1985 to September 30, 1990. Most of the steps called for in this Agreement by SLC are now performed whenever cultural resources are found on state land involved in a lease, timber sale or other project, under CEQA guidelines.

EXHIBIT:

A. Copy of four page memorandum of Agreement.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTION IS EXEMPT FROM THE REQUIREMENT OF THE CEQA PURSUANT TO 14. CAL. ADM. CODE 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTION MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. (14 CAL. ADM. CODE 15061(b)(3)).
2. AUTHORIZE EXECUTION OF A MEMORANDUM OF AGREEMENT BETWEEN THE COMMISSION AND THE BUREAU OF LAND MANAGEMENT CONCERNING CULTURAL RESOURCES SUBSTANTIALLY IN THE FORM ATTACHED AS EXHIBIT "A".

MEMORANDUM OF AGREEMENT AMONG THE CALIFORNIA STATE LANDS COMMISSION, THE BUREAU OF LAND MANAGEMENT, THE ADVISORY COUNCIL OF HISTORIC PRESERVATION AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, FOR LAND TRANSFERS IN CALIFORNIA

WHEREAS, Public Law 61-219, Section 24 and Bureau of Land Management (BLM) land tenure policy allows the BLM to transfer certain Public Lands in the State of California to the State Lands Commission (SLC); and,

WHEREAS, it is likely that cultural properties included in or eligible for inclusion in National Register of Historic Places are located on the lands to be transferred by the BLM to the SLC; and,

WHEREAS, the BLM has determined that the land transfers will have an effect upon properties included in or eligible for inclusion in the National Register on Historic Places and has requested the comments of the Advisory Council of Historic Preservation pursuant to Section 106 and 110f of the National Historic Preservation Act (16 U.S.C. 470) (NHPA) and its implementing regulations, "Protection on Historic and Cultural Properties (36 CFR Part 800)"; and,

WHEREAS, the SLC, on behalf of the State of California, shall succeed to the rights and responsibilities of BLM for taking into account the effects on cultural properties of projects on lands to be transferred under this agreement; and,

NOW, THEREFORE, it is mutually agreed that the signatories to this agreement will observe the following procedures for the identification and consideration of cultural properties during and subsequent to the transfer of public lands to the State of California.

A. The BLM will:

1. Identification: In consultation with the State Historic Preservation Officer (SHPO), and in a manner responsive to the requirements of section 110(a) of the National Historic Preservation Act, the BLM authorized officer will determine whether archaeological, historic or Native American properties are known or are likely to occur on the lands identified for transfer.

2. Evaluation for National Register eligibility. All cultural properties identified in A.1 will be evaluated by the BLM for National Register of Historic Places eligibility following the requirements of 36 CFR 60 and 63. The SHPO will be consulted during the evaluation process.
3. BLM will provide SHPO and SLC with copies of all cultural resource data in accordance with section 102 and 202 of the Federal Land Policy and Management Act of 1976 for inclusion in the State Inventory conducted pursuant to 36 CFR 61.
4. BLM will notify appropriate Native American groups prior to the land transfer to SLC. The Native American groups may participate in cultural resource identification and evaluation should they so desire.
5. The obligation of BLM under Sections 106 and 110 of the NHPA and 36 CFR 800 will terminate upon transfer of public land to the State of California.

B. The SHPO will:

1. Respond to any BLM submission pursuant to Section A of this agreement within 30 days unless a longer time is agreed upon.
2. SHPO will consult with SLC as appropriate on actions stipulated in Section C.

C. The SLC will:

1. Upon receipt of subject lands from BLM, the SLC agrees to be subject to the same rights and responsibilities as BLM's obligations under 36 CFR 800 and Sections 106 and 110 of the NHPA.
2. Acknowledge the receipt of all cultural properties data provided by the BLM.
3. In consultation with the SHPO:
 - A. The SLC shall include development of a Cultural Resources Management Element (CRME) for the transferred lands as part of their general planning effort. This consultation will commence at the time the planning effort begins.
 - B. The element will include provision for periodic custodial surveillance of identified cultural properties by SLC staff.
 - C. All cultural resource work performed under the terms of this agreement will be carried out under the direction of a qualified archaeologist/anthropologist. Qualified herein refers to the requirements listed in 43 CFR 7.8 (appendix).

- D. Upon development of a plan for land use changes, consult to assure that such use would be compatible with objectives for conservation of National Register and eligible properties;
- E. During the plan development process, SLC will consult with appropriate Native American groups.
- F. The CRME will be developed in accordance with the appropriate Sections of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

Projects

- 4. Prior to any action which may affect cultural properties and in consultation with the SHPO, conduct or have conducted an appropriate level of cultural resource inventory and assessment to identify with the SHPO properties which meet the qualifying criteria for the National Register of Historic Places. Where preservation of National Register eligible properties is determined to be incompatible with the proposed land use action the SLC will, in consultation with the SHPO, develop and implement a Cultural Resource Mitigation Program consistent with the provisions of 36 CFR 800, and the Advisory Council on Historic Preservation's handbook entitled "Treatment of Archaeological Properties".

D. Dispute Resolution:

Should the SHPO and SLC be unable to resolve any disputes which result from the provisions in Part C above other than those involving National Register eligibility, the Advisory Council on Historic Preservation shall be notified by the SLC and may assist in arbitrating the dispute. The SLC shall forward all documentation relevant to a dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council's Executive Director will either:

- A. Refer the matter to the Chairman of the Council pursuant to 36 CFR 800.6 (b) (7) or;
- B. Provide the SLC with recommendations, which the SLC shall take into account in reaching a final decision.

All questions regarding eligibility of properties for the National Register of Historic Places will be referred to the Keeper of the National Register, National Park Service for final resolution in accordance with 36 CFR 63.

E. Amendments:

Amendments to this agreement shall be considered and executed in the same manner as the original agreement.

BLM will manage lands transferred to them following the guidance provided by the California Desert Plan and in keeping with appropriate cultural resources preservation law.

Execution of this Memorandum of Agreement evidences that the BLM has afforded the Council a reasonable opportunity to comment on the transfer of lands in the State of California to SLC and that the BLM has taken into account the effects of this undertaking on cultural properties.

This agreement shall apply only to those lands transferred and received between June 30, 1985 and September 30, 1990.

Attachments:

1. National Historic Preservation Act
2. 36 CFR 800
3. Secretary of Interior Standards and Guidelines
4. ACHP Treatment of Archaeological Properties

Agency Official Date

SLC Official Date

Chairman ACHP Date

SHPO Date

Executive Director ACHP Date