

MINUTE ITEM

This Calendar Item No. C17  
was approved as Minute Item  
No. 17 by the State Lands  
Commission by a vote of 3  
to 0 at its 8-12-91  
meeting.

CALENDAR ITEM

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08/12/91  
W 23390 AD 118  
Reese AD 131  
PRC 7294

PROGRAMMATIC AGREEMENT AMONG THE CALIFORNIA  
STATE LANDS COMMISSION (SLC), U.S.D.A. FOREST SERVICE,  
PACIFIC SOUTHWEST REGION (USFS), ADVISORY COUNCIL ON  
HISTORIC PRESERVATION, AND THE CALIFORNIA STATE HISTORIC  
PRESERVATION OFFICE (SHPO), FOR LAND EXCHANGES IN CALIFORNIA

**PARTIES:**

State Lands Commission

United States Department of Agriculture  
Forest Service

California State Historic Preservation Office

The USFS and the SLC are involved in an exchange of land to carry out various program objectives. The USFS is required, by federal law (36 CFR 800 et seq.) to be responsible for cultural resource protection on its land. Such responsibility does not cease with the transfer of lands which contain such cultural resources to another party, without the approval of the National Advisory Council for Historic Preservation and the SHPO.

This Programmatic Agreement assures that cultural resources which exist on such lands will be adequately managed by the SLC (State) as the recipient. The State agrees to manage these resources on the land acquired from the USFS as required under Section 106 and Section 110f of the National Historic Preservation Act (NHPA) (16 USC and 36 CFR 800).

AB 884:  
N/A.

**OTHER PERTINENT INFORMATION:**

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Reys. 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

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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 a significant effect on the environment.

Authority: 14 Cal. Code Regs. 15061(b)(3).

2. While staff of the USFS, SLC, and SHPO attempt to avoid the selection of land which may contain sensitive sites, this agreement outlines procedures to be followed by SLC whenever cultural resources are on State land affected by a lease, timber sale, or other discretionary project.

This Programmatic Agreement is in the same format that the Commission approved December 12, 1989, as Consent Item C40, regarding treatment of cultural resources on lands received from the Bureau of Land Management.

**EXHIBIT:**

- A. Copy of Four-Page Programmatic Agreement

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. (14 CAL. CODE REGS. 15061(b)(3)).
2. AUTHORIZE THE EXECUTIVE OFFICER, OR HIS DESIGNEE, TO EXECUTE A PROGRAMMATIC AGREEMENT BETWEEN THE COMMISSION, THE U.S.D.A. FOREST SERVICE, THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICE, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, CONCERNING CULTURAL RESOURCES SUBSTANTIALLY IN THE FORM ATTACHED AS EXHIBIT "A".

EXHIBIT "A"  
PROGRAMMATIC AGREEMENT

AMONG

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE  
CALIFORNIA STATE LANDS COMMISSION  
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING IMPLEMENTATION OF A LAND EXCHANGE

between the  
U.S. FOREST SERVICE  
and the  
STATE LANDS COMMISSION

WHEREAS, the U.S.D.A. Forest Service (USFS), Pacific Southwest Region, proposes to exchange certain National Forest System (NFS) lands as identified in Exhibit A to the State of California, State Lands Commission (SLC), as authorized by the General Exchange Act of March 20, 1922 (42 Stat. 465; 16 U.S.C. 485), as amended; the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1716); and the Federal Land Exchange Facilitation Act of 1988, and;

WHEREAS, cultural properties that are potentially eligible for inclusion in the National Register of Historic Places are located on NFS lands to be exchanged to SLC, and;

WHEREAS, the USFS has determined that the proposed exchange of NFS lands to the SLC may have an effect upon cultural properties that are potentially eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council) and the California State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of National Historic Preservation Act (16 U.S.C. 470f) and Section 110 of the same act (16 U.S.C. 470h-2), and;

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

NOW, THEREFORE, the SLC, the USFS, the Council, and the SHPO agree that the land exchange proposed between the USFS and SLC shall be performed in accordance with the following stipulations to satisfy USFS's Section 106 responsibility for the proposed action.

A. USFS has performed or will ensure the following measures are carried out:

1. Identification. In a manner responsive to the requirements of Section 106 of the National Historic Preservation Act (NHPA), the USFS has determined, through an archaeological reconnaissance undertaken by the Archaeological Research Program, Department of Anthropology, California State University, Chico and by existing data review, that cultural resources are known to occur on the NFS lands proposed for exchange to

SLC. The results of the archaeological reconnaissance and the inventory of cultural sites are presented in ARP Report No. 91-134.

2. National Register Eligibility. As a result of the information gathered during the archaeological field investigations by the Archaeological Research Program, Department of Anthropology, California State University, Chico, as well as the data developed in the archaeological, ethnographic and historic sections of the archaeological reconnaissance report, the USFS concurs with the findings of ARP Report No. 91-134 that all of the cultural sites are potentially eligible for inclusion in the National Register of Historic Places. It is agreed that further research or testing to determine eligibility of the inventoried sites will not be conducted by the USFS prior to implementation of the proposed exchange to SLC.

3. USFS will provide SHPO and SLC with copies of all cultural resource data, including ARP Report No. 91-134, for inclusion in the State Inventory conducted pursuant to 36 CFR 800.

4. The obligation of USFS under Sections 106 and 110 of the NHPA and 36 CFR 800 will terminate upon exchange of the lands identified in Exhibit A to SLC of the State of California.

B. SLC will ensure that the following measures are carried out:

1. Upon receipt of the exchange lands, the SLC agrees to treat all cultural properties acquired in accord with the provisions of this agreement and in the same manner as is required of USFS under 36 CFR 800 and sections 106 and 110 of the NHPA.

2. Acknowledge the receipt of all cultural resource data provided by the USFS, including ARP Report No. 91-134.

3. Accepts that all sites as identified in ARP Report No. 91-134 may be eligible for inclusion in the National Register of Historic Places and agrees to the following:

a. To practice a policy of avoidance of damage to any cultural sites identified in ARP Report No. 91-134.

b. To consider the effects of any future project activities, including timber harvest and road construction, on the identified archaeological resources and treat them in conformance with the California Environmental Quality Act.

4. In consultation with the SHPO:

a. The SLC shall include development of a Cultural Resources Management Element (CRME) for the exchange lands as part to their general planning effort.

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 archeologist/anthropologist. Qualified herein refers to the requirements listed in 36 CFR 29b 5 (c), .8, and .9.
  - d. During the plan development process, SLC will consult with appropriate Native American groups.
  - e. The CRME will be developed in accordance with the appropriate sections of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.
5. 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 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 prepared land use action the SLC will, in consultation with the SHPO, develop and implement a Cultural Resource Mitigation Program consistent with the provision of 36 CFR 800, and the Advisory Council on Historic Preservation's handbook entitled "Treatment of Archeological Properties."

#### C. 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:

1. Refer the matter to the Chairman of the Council pursuant to 36 CFR 800.6(b) (7) or;
2. 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.

#### D. Amendments

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such amendment. Amendments to this agreement shall be considered and executed in the same manner as the original agreement.

#### E. Termination

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Any party to this Programmatic Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the SLC, USFS and SHPO will comply with all the provisions of this agreement with regard to lands exchanged to SLC during the period of the agreement.

F. Monitoring and Review

The SHPO may monitor activities carried out pursuant to this Programmatic Agreement and the USFS and SLC will cooperate with the Council and the SHPO in carrying out their obligations under this agreement.

G. Compliance

Execution of this Programmatic Agreement evidences that the USFS has satisfied its Section 106 responsibilities and afforded the Council a reasonable opportunity to comment on the exchange of lands in the State of California to SLC and that USFS has taken into account the effects of this undertaking on cultural properties.

FOREST SERVICE, PACIFIC SOUTHWEST REGION

By: RONALD E. STEWART Date: \_\_\_\_\_  
Regional Forester

CALIFORNIA STATE LANDS COMMISSION

By: \_\_\_\_\_ Date: \_\_\_\_\_

CALIFORNIA STATE HISTORIC PRESERVATION OFFICE

By: KATHRYN GUALTIERI Date: \_\_\_\_\_  
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_

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