MINUTE ITEM
This Calendar Item No. 65
was approved as Minute Item
No. 65 by the State Lands
Commission by a vote of 3
to 0 at its 7/10/89
meeting.

CALENDAR ITEM
65

A)
) Statewide
S)

07/10/89
W 23390
Reese

MEMORANDUM OF AGREEMENT BETWEEN THE CALIFORNIA STATE LANDS COMMISSION (SLC), U.S.D.A. FOREST SERVICE (FS), THE NATIONAL ADVISORY COUNCIL OF HISTORIC PRESERVATION AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, FOR LAND EXCHANGES IN CALIFORNIA

Pursuant to previous Commission approval on June 30, 1987, staff is preparing land exchanges with the United Forest Service (FS) for consolidation and enrichment of the school land trust base. The FS is required by federal law, (36 CFR 800 et seq.) to be responsible for cultural resource protection on its lands. Such responsibility does not cease with the transfer of lands which may contain such cultural resources to another party, without the approval of the National Advisory Council for Historic Preservation and the State Historic Preservation Offices.

This program Memorandum of Agreement (MOA) assures that cultural resources which may exist on such lands will be adequately managed by the Commission (State) as the recipient. The State agrees to manage these resources, if any exist on the land acquired from the FS, as required under Section 106 and 110f of the National Historic Preservation Act (NHPA) (16 USC and 36 CFR 800). The agreement applies to lands received during the period of June 1, 1988 to September 30, 1991.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 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 a significant effect on the environment.

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

2. While staff of the FS, Commission, and State Historic Preservation Officer attempt to avoid the selection of land which may contain sensitive sites, procedures within this Agreement are now performed by SLC whenever cultural resources are found on state land affected by a lease, timber sale or other project (under CEQA guidelines).

   This MOA is in the same format that the Commission approved regarding treatment of cultural resources on lands received from the Bureau of Land Management.

EXHIBITS: A. Copy of four page Memorandum of 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 HER DESIGNEE TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE COMMISSION AND THE FOREST SERVICE, USDA, CONCERNING CULTURAL RESOURCES (SUBSTANTIALLY IN THE FORM ATTACHED AS EXHIBIT "A".)

Exhibit "A"

MEMORANDUM OF AGREEMENT AMONG THE CALIFORNIA STATE LANDS COMMISSION, THE FOREST SERVICE, THE ADVISORY COUNCIL OF HISTORIC PRESERVATION AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, FOR LAND EXCHANGES IN CALIFORNIA

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 exchanged by the FS to the SLC; and,

WHEREAS, the FS has determined that the land exchanges 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 FS for taking into account the effects on cultural properties of projects on lands to be exchanged 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 exchange of National Forest lands to the State of California:

A. <u>The FS will:</u>

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 FS authorized officer will conduct a survey to determine whether archaeological, historic or Native American properties are known or are likely to occur on the lands identified for transfer.

2. <u>Evaluation for National Register eligibility</u>. All cultural properties identified in A. 1. will be evaluated by the FS for National Register of Historic Places eligibility following the requirements of 36 CFR 60, 63 and 800. The SHPO will be consulted during the evaluation process.

3. The FS 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. The FS will notify appropriate Native American groups prior to the land exchange to SLC. The Native American groups may participate in cultural resource identification and evaluation should they so desire.

5. The obligation of the FS under Sections 106 and 110 of the NHPA and 36 CFR 800 will terminate upon exchange of National Forest land to the State of California.

B. The SHPO will:

1. Respond to any FS 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 FS, the SLC agrees to be subject to the same rights and responsibilities as FS'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 FS.

3. In consultation with the SHPO:

A. The SLC shall include development of a Cultural Resources Management Element (CRME) for the exchanged 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. 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 Agriculture'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.

The FS will manage lands exchanged to them in keeping with appropriate cultural resources preservation law.

Execution of this Memorandum of Agreement evidences that the FS has afforded the Council a reasonable opportunity to comment on the exchange of lands in the State of California to SLC and that the FS 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, 1988 and September 30, 1991.

Attachments:

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

Regional Forester, FS Date 9/27/89

SLC Official Date

Chairman ARCHP Date

SHPO Date

Executive Director ACHP Date

CALENDAR PAGE 717
MINUTE PAGE 2563