

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,
AND THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE TERRASANTE SUBDIVISION CROSSINGS PROJECT,
WASHOE COUNTY, NEVADA**

WHEREAS, the United States Army Corps of Engineers, Sacramento District (hereafter the “USACE”) proposes to issue a permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) to the Fritz Duda Company (hereafter the “Applicant”), for the Terrasante Subdivision Crossings Project (hereafter the “Project” or the “Undertaking”) located in Washoe County, Nevada; and

WHEREAS, the Project would include the construction of two road crossings within a five (5) acre permit area; and

WHEREAS, the USACE, in consultation with the Nevada State Historic Preservation Officer (hereafter the “SHPO”), has determined that the Undertaking’s Area of Potential Effects (hereafter the “APE”) includes the entirety of the crossings, including staging, access, and construction areas, as depicted on the February 1, 2023, *Figure 3 Project Detail Map*, prepared by NCE and the Fritz Duda Company, included as Attachment 1 to this Memorandum of Agreement (hereafter the “MOA”); and

WHEREAS, the USACE, in consultation with SHPO and in accordance with 36 CFR § 800.4(b) and § 800.4(c), has inventoried historic properties within the Undertaking’s APE and has determined that the segment of the Galena Creek-Washoe Lake Ditch (26WA6160) within the APE retains its integrity and is a contributing segment of the Galena Creek-Washoe Lake Ditch supporting the ditch’s eligibility for the National Register of Historic Places under the Secretary of Interior’s Significance Criterion A, and the SHPO has concurred with this determination in a letter dated June 27, 2023; and

WHEREAS, the USACE, in consultation with the SHPO, has applied the criteria in 36 CFR § 800.5(a) for determining adverse effect, and determined that the Undertaking will have an adverse effect on the Galena Creek-Washoe Lake Ditch; and

WHEREAS, the USACE, after careful consideration of alternatives to the Undertaking, has chosen to proceed with the Undertaking, and has determined to resolve the adverse effect of the Undertaking on the Galena Creek-Washoe Lake Ditch through the execution and implementation of this MOA; and

WHEREAS, the resolution of adverse effect of the Undertaking on the Galena Creek-Washoe Lake Ditch previously included recordation of the ditch and the preparation of the 2002 report entitled, *The Ditch, the Road, and the Fairway: Data Recovery at 26Wa6160, 26Wa6851, and 26WA6847*, prepared by Summit Envirosolutions, which partially mitigated the adverse effect of the Undertaking, and execution and

implementation of this MOA will complete the resolution of adverse effects for the Undertaking; and

WHEREAS, in accordance with 36 CFR § 800.2, the USACE has attempted to consult with the Washoe Tribe of Nevada and California and the Reno Sparks Indian Colony, (hereafter the “Tribes”) regarding the Undertaking and did not receive a response; and

WHEREAS, the Applicant has participated in the development of this MOA, and the USACE has invited the Applicant to participate in this MOA as an Invited Signatory, pursuant to 36 CFR § 800.6(c)(2); and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the USACE notified the Advisory Council on Historic Preservation (hereafter the “ACHP”) of the USACE’s adverse effect determination and provided the ACHP with supporting documentation on September 27, 2023, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii) in a letter dated October 23, 2023; and

NOW, THEREFORE, the USACE and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effects of the Undertaking on historic properties.

STIPULATIONS

The USACE shall ensure that the following measures are carried out:

I. DEFINITIONS

The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this MOA.

II. MITIGATION OF ADVERSE EFFECTS

- A.** The USACE shall make this MOA a condition of the authorization for the Project.
- B.** Prior to the start of construction, the Applicant, or their representative, shall submit an electronic copy of a draft interpretive sign regarding the Galena Creek-Washoe Lake Ditch, including sign design, content, and placement location, to the USACE for review and comment. The interpretive sign design shall be similar to the Nevada Historical Markers for US 395 and the Eureka Mining District. The graphics and text image shall be embedded in a fiberglass panel mounted in an aluminum frame and then placed on a pedestal. The interpretive sign content shall include the role the Galena Creek-Washoe Lake Ditch played in the development of the area's agricultural development, especially as it relates to the Washoe Valley.

1. The USACE shall provide a copy of the draft design, content, and location to the SHPO for review and comment. The USACE and the SHPO shall have thirty (30) calendar days from the date of their receipt to review and comment on the draft interpretive sign.
 2. Within thirty (30) calendar days of receipt of comments from the USACE and the SHPO, the Applicant shall revise the draft interpretive sign design and submit a revised final draft design, content, and location to the USACE and the SHPO for review and comment.
 3. The USACE and the SHPO shall have thirty (30) calendar days from the date of their receipt to review and comment on the revised final draft. If the USACE or the SHPO do not provide timely comments to the Applicant, the Applicant may finalize the revised interpretive sign design, content, and location.
 4. Upon approval of the revised final draft, the Applicant shall produce and install the interpretive sign before March 1, 2025. Within seven (7) calendar days of installation, the Applicant shall provide evidence (e.g., photographs) of the sign installation to the USACE. Upon receipt, the USACE shall provide a copy of the evidence to the SHPO.
- C. Within thirty (30) calendar days of completion of construction, the Applicant shall submit a site update record for the segment of the Galena Creek-Washoe Lake Ditch documenting the alteration of the ditch by the Project to the Nevada Cultural Resource Information System. The Applicant shall concurrently provide a copy of the record update to the USACE.

III. POST-REVIEW DISCOVERIES

- A. Should any human remains or cultural material not previously identified be discovered during Project construction, the Applicant, or their representative, will ensure work immediately ceases (allowing for necessary safety precautions to be completed) within fifty (50) feet of the discovery and the discovery location secured from additional impacts from Project construction. The Applicant, or their representative, shall immediately notify the USACE of the discovery. The USACE shall coordinate with SHPO and appropriate Tribe(s) regarding the discovery, pursuant to 36 CFR § 800.13. In the event that human remains are discovered, procedures under NRS 383 and/or NRS 451 shall be followed, as appropriate. Artifacts associated with burials are to be treated in the same manner as human remains.
1. After notifying the USACE of the discovery, the Applicant, or their representative, shall prepare a report pursuant to Stipulation IV.C within seven (7) days of the discovery and distribute the report electronically

concurrently to the USACE and the SHPO. The report shall fully describe the finding(s) with maps and photographs, as appropriate.

- B. After appropriate treatment of the discovery is completed in the area secured from Project construction, the Project may resume in that area upon receipt of written authorization from the USACE.

IV. PROFESSIONAL QUALIFICATIONS AND STANDARDS

A. Professional Qualifications.

All historic preservation activities implemented pursuant to this MOA shall be conducted by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of Interior's *Professional Qualifications Standards* (PQS) for Archeology, History, or Architectural History (48 FR 44738-39), as appropriate.

B. Historic Preservation Standards.

All historic preservation activities carried out pursuant to the MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) as well as standards and guidelines for historic preservation activities established by the SHPO and the National Park Service.

C. Documentation Standards.

The USACE shall ensure that all written documentation prescribed by Stipulations II and III of this MOA shall conform to the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740), as well as to applicable standards and guidelines established by the SHPO.

V. ADMINISTRATIVE STIPULATIONS

A. CONFIDENTIALITY.

The parties to this MOA acknowledge that historic properties covered by this MOA are subject to the provisions of Section 304 of the National Historic Preservation Act (hereafter the "NHPA") (54 U.S.C. § 307103) and 36 CFR § 800.11(c), relating to the disclosure of sensitive archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with Section 304 of the NHPA and 36 CFR § 800.11(c).

B. RESOLVING OBJECTIONS.

1. Should any party to this MOA object to the manner in which the terms of this MOA are implemented or to any documentation prepared in accordance with

and subject to the terms of this MOA, the objecting party shall immediately notify the other parties, in writing, of the nature of its objection. Responsive comments shall be provided by the non-objecting parties in writing within fifteen (15) calendar days following receipt of the expression of objection. As soon as practicable after notice of an objection, the parties hereto shall begin cooperative discussions for the purpose of resolving the dispute.

2. The parties agree to work cooperatively and diligently toward a mutually acceptable resolution of the objection during a consultation period not to exceed thirty (30) calendar days, beginning on the date responsive comments are received by the objecting party from the non-objecting parties or the close of the fifteen-day comment period in Stipulation V.B.1, whichever comes first. If the parties resolve the objection, the terms of the resolution shall be incorporated into a written amendment to the MOA in accordance with Stipulation V.C, below. Thereafter, the USACE may proceed in accordance with the terms of the resolution.
3. If, however, no resolution is reached during the consultation period, the USACE shall:
 - a. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, the SHPO, and the Invited Signatory and provide them with a copy of this written response. The USACE will then proceed according to its final decision.
 - b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO and the Invited Signatory to the MOA and provide them and the ACHP with a copy of such written response.
 - c. USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

C. AMENDMENTS

Any party to this MOA may propose that this MOA be amended, whereupon all parties to the MOA will consult for no more than thirty (30) days to consider such

amendment. The USACE may extend this consultation period, if necessary. The amendment process shall comply with 36 CFR § 800.6(c)(7). This MOA may be amended only upon the written agreement of the Signatories and Invited Signatory and the USACE shall file a copy of the amended MOA with the ACHP, as required by 36 CFR § 800.6(c)(7). If the MOA is not amended, it may be terminated by a Signatory or Invited Signatory in accordance with Stipulation V.D.

D. TERMINATION

1. Only a Signatory or Invited Signatory may terminate this MOA. If this MOA is not amended as provided for in Stipulation V.C above, or if the USACE or the SHPO proposes termination of this MOA for other reasons, the party proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and shall consult with the other parties to this MOA for no more than thirty (30) calendar days to seek alternatives to termination. Should such consultation result in an agreement, the parties shall proceed in accordance with the terms of that agreement and shall prepare any amendment to the MOA, if needed, in accordance with Stipulation V.C.
2. If, after thirty (30) calendar days, consultation has not led to a resolution of the objection, the party proposing termination may terminate this MOA by promptly notifying the other parties to the MOA in writing. Termination shall render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if the USACE determines that the undertaking will nonetheless proceed, then the USACE shall advise the ACHP and request its comments in accordance with the requirements of 36 CFR § 800.6(c)(8) and 36 CFR §§ 800.7(a) and (c).

E. DURATION OF THE MOA

1. Unless terminated pursuant to Stipulation V.D, this MOA will remain in effect following execution by the Signatories until the USACE, in consultation with the other parties hereto, determines that all the terms of this MOA have been satisfactorily fulfilled, or within five (5) years of its date of execution, whichever comes first. Upon a determination by the USACE that all of the requirements of this MOA have been satisfactorily fulfilled, the USACE shall notify the other parties to this MOA in writing that the MOA has been fully satisfied and is therefore concluded.
2. If the requirements of this MOA appear unlikely to be fully performed within five (5) years following its date of execution, the USACE shall consult with the other parties hereto to reconsider its terms at least sixty (60) calendar days prior to the date on which five (5) years will have elapsed. Reconsideration

may include an agreement by the parties to extend the MOA on its original terms for a mutually agreed-upon additional period, or an agreement to amend the MOA in accordance with Stipulation V.C above, or termination. In the event of termination, the USACE will comply with Stipulation V.D.3 of this MOA, if it determines that the Undertaking will proceed notwithstanding termination of this MOA.

3. If the USACE has not issued authorization for the Project within five (5) years following execution of this MOA, this MOA shall automatically terminate and have no further force or effect. In such event, the USACE shall notify the other parties in writing and, if the Applicant chooses to continue with the Undertaking, USACE shall reinitiate review of the Undertaking.

F. EFFECTIVE DATE.

This MOA will take effect immediately upon its execution by the Signatories.

EXECUTION of this MOA by the USACE and the SHPO and implementation of its terms shall evidence that the USACE has taken into account the effects of this Undertaking on historic properties has afforded the ACHP an opportunity to comment.

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SIGNATORY:

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name: *Nancy A. Haley* Date: February 2, 2024
Nancy A. Haley
Title: Chief, Nevada Section

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SIGNATORY:

NEVADA STATE HISTORIC PRESERVATION OFFICER

Name: _____

Rebecca Palmer

Date: _____

February 8, 2024

Title: State Historic Preservation Officer

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INVITED SIGNATORY:

FRITZ DUDA COMPANY

Name:  _____

Date: 1/31/24

Paul Tanguay
Title: Vice President Western Region

ATTACHMENT 1
Area of potential effects/permit area

