

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS
County of Placer

TO: BOARD OF SUPERVISORS

DATE: July 13, 2010

FROM:  KEN GREHM / RICHARD MOOREHEAD 

SUBJECT: **CAPE HORN EMERGENCY ACCESS - MAINTENANCE AGREEMENT FOR
BREAKAWAY FENCE**

ACTION REQUESTED / RECOMMENDATION

Adopt a Resolution authorizing the Director of Public Works to execute a Maintenance Agreement between Placer County and the State of California Department of Transportation (Caltrans) for the breakaway fence at Cape Horn and authorize the use of up to \$20,000 of Placer East Traffic Impact Fees for construction.

BACKGROUND / SUMMARY

For many years the community in the vicinity of Cape Horn Road has requested that the closed maintenance access off of Interstate 80 (I-80) be re-opened for emergency access only. If this access were open, it saves between seven to ten minutes in travel time for an emergency responder traveling to the area when using eastbound I-80. The County has made the request to Caltrans in the past, but we were unsuccessful in re-opening the access. Recently, the County again made the request to Caltrans and we have now been given permission to modify the access to allow the placement of a breakaway fence.

Prior to the any modifications to Caltrans facilities or work within their right-of-way, a Maintenance Agreement must be executed to define the responsibility between the State and the County. In this case, the County will be responsible for all construction and maintenance at this location. If vandalism occurs and the fence is removed allowing residents to begin using it for access, the County will be responsible for restoring the area to a condition similar to as it exists today which makes it impassable to vehicular traffic. A copy of the Maintenance Agreement is attached for your review.

The construction at the site will be done using County forces and entails removal of a guardrail, removal of an earthen berm, minor grading, and placement of the breakaway fence. The cost of the project will be minimal and it is requested that the use of Traffic Mitigation Fees be used to fund the construction.

Staff recommends approval of the attached Resolution authorizing the Director of Public Works to execute the Maintenance Agreement and authorizing the use of Placer East Traffic Impact Fees for the construction of the project.

ENVIRONMENTAL

This action is exempt under CEQA guidelines per Section 15301(c), Operation of Existing Streets and Highways.

FISCAL IMPACT

The total project cost is anticipated not to exceed \$20,000 and there are sufficient funds in the fee district to cover the cost.

Attachments: Resolution
Attachment A-Vicinity Map and Copy of Final Maintenance Agreement

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**Before the Board of Supervisors
County of Placer, State of California**

**In the matter of: A RESOLUTION
AUTHORIZING THE DIRECTOR OF PUBLIC
WORKS TO EXECUTE A MAINTENANCE
AGREEMENT BETWEEN PLACER COUNTY
AND THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
(CALTRANS) AND AUTHORIZE USE OF
\$20,000 IN TRAFFIC IMPACT FEES.**

Resol. No:.....

Ord. No:.....

First Reading:.....

The following RESOLUTION was duly passed by the Board of Supervisors
of the County of Placer at a regular meeting held _____,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

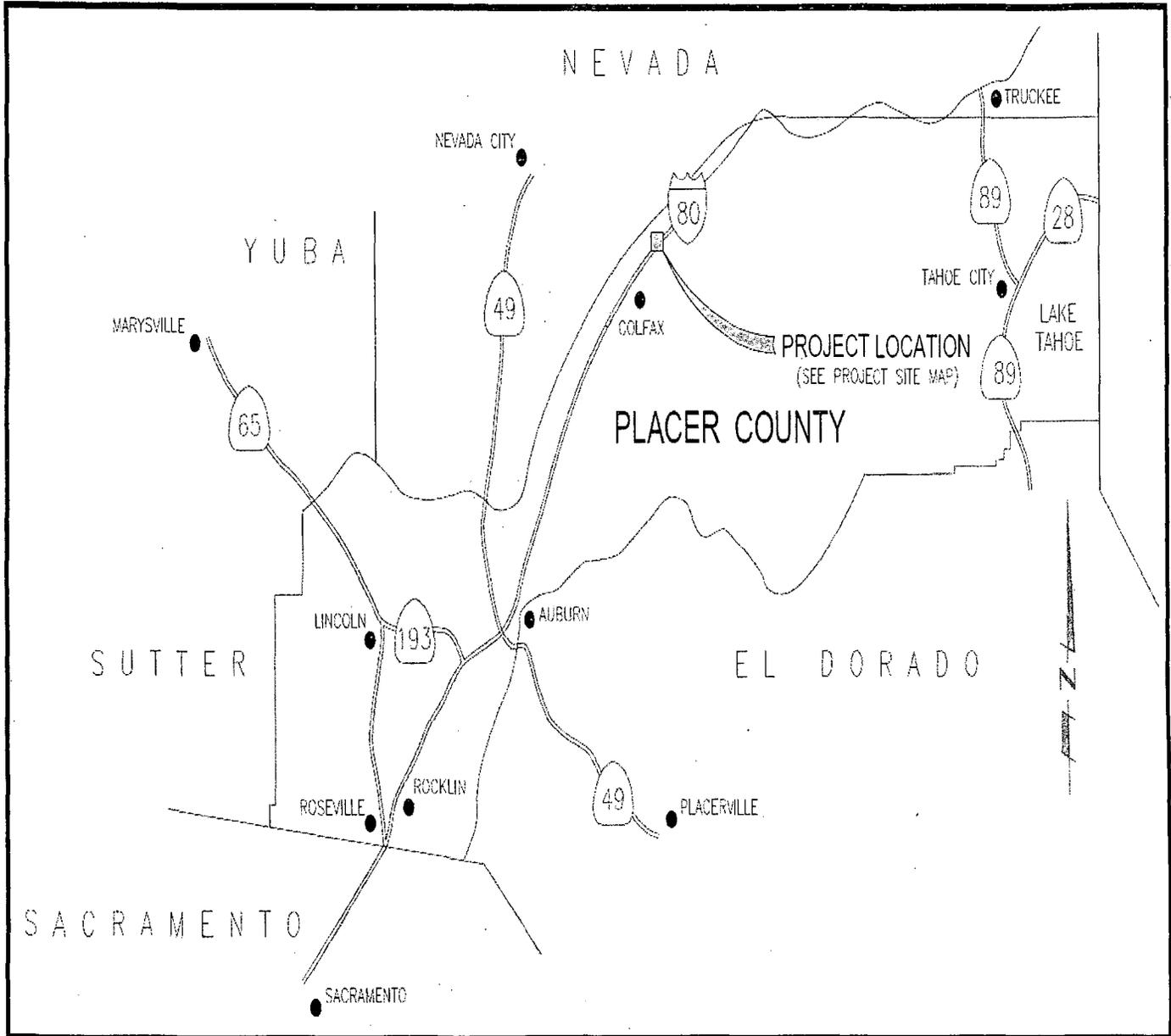
Attest:
Clerk of said Board

Chairman, Board of Supervisors

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of
Placer, State of California, as follows:

The Placer County Board of Supervisors does hereby approve this Resolution
authorizing the Director of Public Works to execute a Maintenance Agreement between
Placer County and the State of California Department of Transportation (Caltrans) and
authorizes the use of \$20,000 in Traffic Impact Fees for construction.

VICINITY MAP



**AGREEMENT FOR BREAKAWAY FENCE MAINTENANCE
WITHIN STATE HIGHWAY RIGHT OF WAY
ON ROUTE 80 WITHIN THE COUNTY OF PLACER**

THIS AGREEMENT is made and executed effective this _____ day of _____, 2010, by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the County of Placer, hereinafter referred to as "COUNTY" together referred to as "PARTIES".

WITNESSETH

RECITALS:

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE'S right of way by Encroachment Permit Number.
2. This Agreement addresses COUNTY responsibility for the breakaway fence (collectively the "FENCE") placed within State Highway right of way on State Route 80, as shown on Exhibit "A", attached to and made a part of this Agreement.

Section I

In consideration of the mutual covenants and promises herein contained, COUNTY and STATE agree as follows:

- a) PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, & maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of FENCE as shown on said Exhibit "A."
- b) When a planned future improvement is constructed and/or a minor revision has been effected with STATE'S consent or initiation within the limits of the STATE'S right of way herein described which affects PARTIES' division of maintenance responsibility as described herein, PARTIES will agree upon and provide a new dated and revised Exhibit "A" which will be made a part hereof by an amendment to this Agreement when executed and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement.

Section II

COUNTY agrees, at COUNTY expense, to do the following:

- a) COUNTY may install, or contract authorizing a licensed contractor with appropriate class of license in the State of California, to install and thereafter will MAINTAIN (section 27 of the Streets and Highways Code) FENCE conforming to those plans and specifications (PS&E) pre-approved by STATE.
- b) COUNTY will submit the final form of the PS&E for FENCE to STATE'S District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way. All proposed FENCE must meet STATE'S applicable standards.
- c) COUNTY will submit a one-time Encroachment Permit application for routine COUNTY MAINTENANCE functions as required by this Agreement. Individual Encroachment Permits shall be obtained for any substantive repair activities, changes to the scope of work allowed by this Agreement or any MAINTENANCE activities requiring access from STATE highway side of FENCE, prior to the start of any work within STATE'S right of way.
- d) COUNTY contractors will also obtain Encroachment Permits prior to the start of any work within STATE'S right of way.
- e) COUNTY shall ensure that FENCE designated on Exhibit "A" is provided with adequate routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- f) To expeditiously repair any STATE facility damage ensuing from COUNTY'S FENCE presence and, activities and to reimburse STATE for its costs to repair STATE facility damage ensuing from COUNTY'S FENCE presence and activities should STATE be required to cure a COUNTY default.
- g) To place temporary barricades when FENCE is knocked down due an emergency and to effect repairs to FENCE within Two (2) days. If COUNTY should cease to MAINTAIN the FENCE to the satisfaction of STATE as provided by this Agreement, COUNTY hereby agrees to pay STATE expenses, within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE on FENCE or removing FENCE, STATE will provide written notice to COUNTY to cure the default and COUNTY will have two (2) days within which to effect that cure.
- h) To place temporary barricades when FENCE is knocked down for some reason other than an emergency and to effect repairs to FENCE within Two (2) days. If COUNTY should cease to MAINTAIN the FENCE to the satisfaction of STATE as provided by this Agreement, COUNTY hereby agrees to pay STATE expenses, within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE on FENCE or removing FENCE, STATE will provide written notice to COUNTY to cure the default and COUNTY will have two (2) days within which to effect that cure.

- i) To remove FENCE and appurtenances and restore STATE standard fence and right of way to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- j) To inspect FENCE on a regular basis to ensure the safe operation and condition of the FENCE.
- k) To expeditiously MAINTAIN, replace, repair or remove from service any FENCE system component that has become unsafe or unsightly.
- l) FENCE must be as effective as current STATE standard fence at preventing animals from entering STATE right of way.
- m) At no time shall anything be attached, hung, or displayed on FENCE, that includes, but is not limited to, advertising.
- n) FENCE may not be changed or altered from what has been approved by STATE.
- o) COUNTY shall not prune or trim trees, plants or other vegetation within STATE right of way.
- p) To allow random inspection of FENCE by a STATE representative.
- q) All work by or on behalf of COUNTY will be done at no cost to STATE.

Section III

STATE agrees to do the following:

- a) Provide COUNTY with timely written notice of unsatisfactory conditions that require correction by COUNTY.
- b) Issue Encroachment Permits to COUNTY and COUNTY contractors at no cost to them

Section IV

Legal Relations and Responsibilities:

- a) Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement, or affect the legal liability of either PARTY to this Agreement by imposing any standard of care

respecting the design, construction and MAINTENANCE of these STATE highway improvements or COUNTY facilities different from the standard of care imposed by law.

- b) If during the term of this Agreement, COUNTY should cease to MAINTAIN the FENCE to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of COUNTY at COUNTY'S expense or direct COUNTY to remove or itself remove FENCE at COUNTY'S sole expense and restore STATE's right of way to its prior or a safe operable condition. COUNTY hereby agrees to pay said STATE expenses within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing FENCE, STATE will provide written notice to COUNTY to cure the default and COUNTY will have two (2) days within which to effect that cure.
- c) Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless COUNTY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement with the exception of those actions of STATE necessary to cure a noticed default on the part of COUNTY.
- d) Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that COUNTY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY under this Agreement.
- e) Insurance
COUNTY and their contractors shall maintain in force, during the term of this Agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the State of California, its officers, agents and employees as the additional insured in an amount of \$1 million per person and \$2 million in aggregate. **Coverage shall be evidenced by a certificate of Insurance in a form satisfactory to Department that shall be delivered to Department with a signed copy of this Agreement.**
- f) Prevailing Wage Requirements

Workers employed in the performance of work contracted for by COUNTY, and /or performed under Encroachment Permit, are covered by the prevailing wage provisions of the Labor Code in the same manner as are workers employed by STATE'S contractors. COUNTY shall require its contractors to include prevailing wage requirements in all subcontracts entered into to perform the work mentioned in this Agreement. All of COUNTY'S contracts with their contractors shall include a requirement that contractors and their subcontracts shall include prevailing wage requirements identical to those set forth in this Agreement.

g) Termination

This Agreement may be terminated by timely mutual written consent by PARTIES, and COUNTY'S failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.

h) Term of Agreement

This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of PARTIES or until terminated by STATE for cause.

PARTIES are empowered by Street and Highways Code section 114 & 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

STATE OF CALIFORNIA
Department Of Transportation

COUNTY OF PLACER

CINDY MCKIM
Interim Director of Transportation

By: _____
KEN GREHM, Director of Public Works

By: _____
JODY JONES, District Director

Approved as to form and procedure:

* Approved as to form:
* Approved as to form and procedure:

Attorney
Department of Transportation

Attorney (or Counsel)

Approval by STATE'S Attorney is not required unless changes are made to this form, in which case the draft will be submitted for Headquarters' review and approval by STATE'S Attorney as to form and procedures.

EXHIBIT A

PLA 80 PM 36.859

BREAKAWAY FENCE AT CAPE HORN ROAD

