



**DEPARTMENT OF THE ARMY**  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO  
ATTENTION OF

Environmental Resources Branch

Mr. Milford Wayne Donaldson  
State Historic Preservation Officer  
Office of Historic Preservation  
P.O. Box 942896  
Sacramento, California 94296-0001

Dear Mr. Donaldson:

Pursuant to the provisions of Section 106 per 36 CFR Section 800.3(c)(3) the U.S. Army Corps of Engineers (Corps) is initiating consultation regarding the issuance of approvals and permits for the Natomas Levee Improvement Program Landside Improvements Project (NLIP.) This letter describes the project proposed by Sacramento Area Flood Control Agency (SAFCA), the NLIP, and the approach proposed by the Corps for satisfying Section 106 of the National Historic Preservation Act (NHPA) for this undertaking. The project is intended to provide urgently needed flood control system improvements and provide at least 100-year flood protection as quickly as possible to the Natomas Basin in southern Sutter and northern Sacramento Counties (Enclosure 1), while laying the groundwork to achieve at least urban-standard ("200-year") flood protection over time.

The project includes improving various portions of the Natomas Basin flood control system and making related landscape and irrigation/drainage infrastructure modifications in three phases in 2008, 2009, and 2010. Enclosure 2 shows the anticipated phases of construction along the levee system. Project activities are summarized as follows and more details are provided in Enclosure 3:

### **2008 construction**

- Along the 5.3-mile Natomas Cross Canal (NCC) south levee, raise the levee to provide additional freeboard; realign the levee to provide a more stable waterside slope and to reduce the need for removal of waterside vegetation, and construct a seepage cutoff wall in the eastern 4.3 miles (approximately) of the levee to reduce the risk of levee failure due to seepage and stability concerns.
- Along the Sacramento River east levee, construct a raised adjacent setback levee from the NCC to about 3,100 feet south of the North Drainage Canal with seepage berms where required to reduce seepage potential, and install woodland plantings.
- Construct a new canal designed to provide drainage and associated giant garter snake habitat (referred to in this EIR as the "GGs/Drainage Canal"), relocate the Elkhorn Canal between the North Drainage Canal and the Elkhorn Reservoir settling basin ("Elkhorn Reservoir"), and remove a deep culvert from under the levee near the Reclamation District 1000 Pumping Plant No. 2 site.

- Re-contour the land and create marsh and upland habitat at borrow locations.

## **2009 and 2010 construction**

Along the Sacramento River east levee south of the limits of the 2008 improvements, construct an adjacent setback levee (raised where needed to provide adequate freeboard) with seepage berms, relief wells, and cutoff walls as required, and install woodland plantings.

- Widen the levee and construct seepage berms along the Pleasant Grove Creek Canal west levee.
- Construct a new GGS/Drainage Canal between Elkhorn Reservoir and the West Drainage Canal, improve the West Drainage Canal, relocate the Riverside Canal and the Elkhorn Canal downstream of Elkhorn Reservoir, and reconstruct the Reclamation District 1000 Pumping Plant No. 2.

Re-contour the land and create marsh and upland habitat at borrow locations.

- Remove encroachments from the water side of the Sacramento River east levee as needed to ensure that the levee can be certified as meeting the minimum requirements of the National Flood Insurance Program and USACE design criteria, and address Federal Emergency Management Agency (FEMA) requirements for the State Route 99/70 bridge crossing of the NCC.

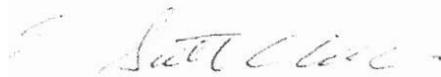
Through discussion with your office, we have determined that a Programmatic Agreement (PA) is the appropriate vehicle for satisfying Section 106. The nature of the undertaking, the cultural resources management efforts required, and the necessary federal authorizations and permits require a departure from the process for satisfying Section 106 described in 36 CFR Section 800 et. seq. The standard Section 106 process requires federal agencies to identify all historic properties, determine the effect of the undertaking on those resources, and complete dialogue with consulting parties before Section 106 is complete. For the following reasons, this procedure is not possible in this instance:

- The applicant requires both permission to alter federal flood control structures under Section 408 of the Rivers and Harbors Act (33 U.S. Code Section 408) and one or more individual permits to discharge fill to jurisdictional waters under Section 404 of the Clean Water Act (33 U.S. Code Section 1344). The Section 408 permission will be granted separately for each year of project construction, corresponding to the three years of project work (2008, 2009, and 2010) that collectively constitute the entire project.
- The undertaking will likely have an adverse effect on at least one historic property, CA-Sac-485/H. This adverse effect must be resolved via the Section 106 process, and the method of resolution should be documented in an agreement document.

- The Area of Potential Effect (APE) will consist of the work described in the Environmental Impact Report (EIR) on the Natomas Levee Improvement Program Landside Improvements Project. The exact APE for all phases of construction remains unclear.
- The applicant is in the process of acquiring rights-of-entry, easements, and ownership interests in the project footprint where effects on historic properties may occur. This phased access will require an ongoing effort to inventory historic properties in the APE, rather than a single inventory effort.
- The project includes landside improvements to the levee along the east bank of the Sacramento River, an area that is sensitive for buried archaeological sites. The method for dealing with unanticipated discoveries needs to be in an agreement document and described in detail in a manner that incorporates the framework provided in 36 CFR Section 800.13 *Post-review Discoveries*.
- The complexity and phased nature of the project dictates that ongoing consultation with federally recognized tribes and other Native American groups and individuals is the best method for incorporating their concerns and input.

The Corps proposes that SAFCA, the USACE, and the SHPO adopt a Programmatic Agreement (PA) providing for a phased identification of resources and assessment of effects. We have included a draft PA (Enclosure 4) for your consideration. Upon receipt of your concurrence, we will notify the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Section 800.14 et. seq. If the ACHP declines to participate, we will collaborate with your office to develop and finalize the management framework provided in the PA. If you have any questions or need any additional information, please do not hesitate to contact me so that we can remedy any information gaps. Comments or questions may be sent to Mr. Daniel A. Bell, U.S. Army Corps of Engineers, CESP-K-PD-RA, 1325 J Street, Sacramento, California 95814; email at [daniel.a.bell@usace.army.mil](mailto:daniel.a.bell@usace.army.mil); phone at (916) 557-6818, or fax at (916) 557-7856.

Sincerely,



Francis C. Piccola  
Chief, Planning Division

Enclosures



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814

REPLY TO  
ATTENTION OF

Environmental Resources Branch

FEB 1 - 2008

Ms. Jessica Taveres, Chairperson  
United Auburn Indian Community of Auburn  
575 Menlo Drive, Suite 2  
Rocklin, California 95765

Dear Chairperson;

The U.S. Army Corps of Engineers (Corps), Sacramento District, is writing you in accordance with the National Historic Preservation Act, to inform you of the proposed Natomas Levee Improvement Program Landside Improvements Project (Project) located along the Sacramento River in Sutter and Sacramento Counties. The project requires that the Sacramento Area Flood Control Agency obtain permits from the U.S. Army Corps of Engineers, Sacramento District (Corps), and is therefore considered a federal undertaking pursuant to Section 106 of the National Historic Preservation Act (NHPA) and is subject to the requirements of Section 106 of the National Historic Preservation Act. We are also inviting you to participate as a concurring party in the development and execution of a Programmatic Agreement (PA). The Area of Potential Effects (APE) for the proposed project is shown on the enclosed topographic map (enclosure 1).

The proposed project is intended to provide urgently needed flood control system improvements and provide at least 100-year flood protection as quickly as possible to the Natomas Basin in southern Sutter and northern Sacramento Counties, while laying the groundwork to achieve at least urban-standard ("200-year") flood protection over time.

The proposed project includes improving various portions of the Natomas Basin flood control system and making related landscape and irrigation/drainage infrastructure modifications in three phases in 2008, 2009, and 2010. Enclosure 2 shows the anticipated phases of construction along the levee system. Project activities are summarized as follows:

#### 2008 construction

- Along the 5.3-mile Natomas Cross Canal (NCC) south levee, raise the levee to provide additional freeboard; realign the levee to provide a more stable waterside slope and to reduce the need for removal of waterside vegetation, and construct a seepage cutoff wall in the eastern 4.3 miles (approximately) of the levee to reduce the risk of levee failure due to seepage and stability concerns.
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- Construct a new canal designed to provide drainage and associated giant garter snake habitat (referred to in this EIR as the "GGS/Drainage Canal"), relocate the Elkhorn Canal between the North Drainage Canal and the Elkhorn Reservoir settling basin ("Elkhorn Reservoir"), and

remove a deep culvert from under the levee near the Reclamation District 1000 Pumping Plant No. 2 site.

- Recontour the land and create marsh and upland habitat at borrow locations.

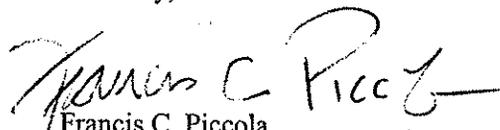
#### 2009 and 2010 construction

- Along the Sacramento River east levee south of the limits of the 2008 improvements, construct an adjacent setback levee (raised where needed to provide adequate freeboard) with seepage berms, relief wells, and cutoff walls as required, and install woodland plantings.
- Widen the levee and construct seepage berms along the Pleasant Grove Creek Canal west levee.
- Construct a new GGS/Drainage Canal between Elkhorn Reservoir and the West Drainage Canal, improve the West Drainage Canal, relocate the Riverside Canal and the Elkhorn Canal downstream of Elkhorn Reservoir, and reconstruct the Reclamation District 1000 Pumping Plant No. 2.
- Recontour the land and create marsh and upland habitat at borrow locations.
- Remove encroachments from the water side of the Sacramento River east levee as needed to ensure that the levee can be certified as meeting the minimum requirements of the National Flood Insurance Program and USACE design criteria, and address Federal Emergency Management Agency (FEMA) requirements for the State Route 99/70 bridge crossing of the NCC.

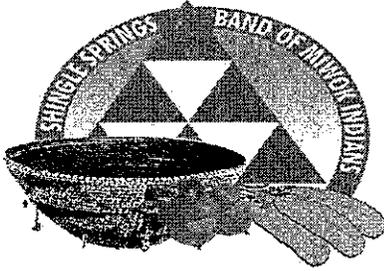
The level of effort towards identifying historic properties will be conducted pursuant to 36 CFR 800.4(b)(1) and will include an updated records and literature search, and field survey. We have developed a draft PA to take into account any adverse affects to historic properties as a result of project construction. A PA is a compliance document that specifies procedures that a Federal agency will follow on a project when all of the potential adverse effects are not known. PA's are negotiated and executed between the Federal agency, the State Historic Preservation Officer, and occasionally the Advisory Council on Historic Preservation. Stipulations in the draft PA have been included to take into account any issues or concerns that you may have regarding cultural resources and potential adverse effects on them. We are also requesting information regarding the presence of any traditional cultural properties, sacred sites, or other areas of cultural interest to the members of the Paskenta Band in the project area. A copy of the draft PA is provided for your review and comment (enclosure 3).

We request that you respond within 45 days of receipt of this letter. We would appreciate knowing if you wish to participate in consultation on the PA, and we welcome your comments and suggestions that you may have. Please direct any comments on the draft PA, cultural resources investigation, or any other aspect of our work on the Project to Mr. Daniel A. Bell, Archeologist, at (916) 557-6818, email: [daniel.a.bell@usace.army.mil](mailto:daniel.a.bell@usace.army.mil). Questions regarding the overall project may be directed to Mr. Daniel Tibbits, Project Manager, at (916) 557-7372, or email [dan.p.tibbits@usace.army.mil](mailto:dan.p.tibbits@usace.army.mil). Your time and consideration are greatly appreciated.

Sincerely,

  
Francis C. Piccola  
Chief, Planning Division

Enclosures



## SHINGLE SPRINGS RANCHERIA

P.O. BOX 1340; SHINGLE SPRINGS, CA 95682  
(530) 676-8010; FAX (530) 676-8033

May 8, 2008

**Office of State Historic Preservation**

1416 9<sup>th</sup> Street, Room 1442-7

Sacramento, CA 95814

Attn: Dwight Dutschke, Associate Park & Recreation Specialist, Project Review Unit

Email: [ddutschke@parks.ca.gov](mailto:ddutschke@parks.ca.gov)

Fax: 916-653-9824

**U.S. Army Corps of Engineers**

Sacramento District

1325 J Street, Room 840

Sacramento, CA 95814

Attn: Col. Thomas C. Chapman, District Engineer

Email: [lori.d.whitmer@usace.army.mil](mailto:lori.d.whitmer@usace.army.mil)

Fax: 916-557-7859

Attn: Linda Brown

**Sacramento Area Flood Control Agency [SAFCA]**

1007 – 7<sup>th</sup> Street, 7<sup>th</sup> Floor

Sacramento, CA 95814

Attn: Stein M. Buer, Executive Director

John Bassett, Director of Engineering

Email: [info@safca.org](mailto:info@safca.org)

Fax: 916-874-8289

Re: Draft Programmatic Agreement for the Natomas Levee Improvement Program; Notification of Ongoing Consultation Issues Arising from Ongoing Work at Site

Dear Mr. Dutschke, Col. Chapman, Ms. Brown, Mr. Buer, and Mr. Bassett:

The Shingle Springs Band of Miwok Indians [the Band], designated as the Most Likely Descendant [MLD] by the Native American Heritage Commission, takes this opportunity to provide preliminary comments on the proposed Programmatic Agreement and to request formal consultation before the Programmatic Agreement is finally negotiated, especially to include protocols for the respectful treatment and disposition of human remains, associated funerary objects, and other cultural items.

As a preliminary matter, we wish to advise the addressed agencies that by this letter the Band does not intend to imply that the agencies have not tried to contact the Band's prior representative for these matters, Mr. Jeff Murray. In order to avoid any further delays, the Band has identified John Tayaba, Tribal Vice Chair, to take all responsive actions with regard to our obligations as MLD. Please also understand that our comments are preliminary. The Band has asked our attorney, Brigit S. Barnes, to review the proposed Programmatic Agreement, relevant portions of the NLIP Landside Improvements EIR, and related federal reviews so as to advise Mr. Tayaba on these matters, as well as a pressing issue which must be addressed regardless of the status of negotiations on the Programmatic Agreement. We ask that copies of any and all correspondence to the Band be sent to Mrs. Barnes at Brigit S. Barnes & Associates, Inc., 3262 Penryn Road, Suite 200, Loomis, CA 95650; Telephone: (916) 660-9555; Fax: (916) 660-9554; Email: [bsbarnes@landlawbybarnes.com](mailto:bsbarnes@landlawbybarnes.com).

Please also consider this letter to request that the Band be treated as a "consulting party" for the Programmatic Agreement, and for all future work along the Natomas River, pursuant to 36 CFR 800.3(f)(3).

**1. Possible Disrespectful Treatment of Native American Remains During Sampling by EDAW On Site**

The Band has been informed, and its preliminary investigation confirms, that while EDAW was conducting small-scale shovel testing along the eastern side of CA-Sac-485/H, a preliminarily identified burial site was rough-dug, thus resulting in potential damage to the human remains located within the pit. Based on what we have been informed of, the treatment of the site overall does not comport with state or federal law, and we request an immediate investigation into the manner of excavation used by EDAW at the site.

**2. Comments to Draft Programmatic Agreement [PA]**

**General.** Has the Advisory Council on Historic Preservations Been Invited to Participate? We request that the Council be involved or otherwise have an opportunity to comment if consultation with the Tribes is inadequate. We do not know whether any of the Tribes identified in the NLIP EIR have been given an ability to speak to the language of this PA, or been invited to be formal signatories to this PA. As the MLD, we request the right to be a formal signatory to this PA after negotiation.

**I. DEFINITIONS**

**APE.** The Native American community should be allowed to comment on the Area of Potential Effects [APE] before it is altered. We formally request that the PA definition notes that "the Tribes have been consulted about the nature and location of the APE and their concerns have been adequately considered", or some similar language.

**Cultural Resources.** It is appropriate to include traditional cultural places in this definition, but traditional cultural properties should be moved to the following definition.

**“Historic Property”** explicitly includes traditional cultural properties as properties of value to cultural groups that have been determined eligible for or are listed on the National Register of Historic Places.

## **II. STANDARDS**

**(A.) Professional Qualifications.** Please include specific mention of an ethnographer for places of value to the Native American community. The perspective of the Tribes needs to be addressed by a professional who understands and communicates tribal interests, and whose values are not at odds with tribal values.

**(B.) Historic Preservation Standards.** Please include the following: “The Corps shall insure that the Tribes are provided with all draft reports prepared pursuant to this Programmatic Agreement, and that the Tribes will be offered the opportunity to review and comment on the reports. All comments by the Tribes shall be appropriately considered in the preparation of the final report.”

## **III. PROJECT DESCRIPTION**

**(C.) Project Phasing and Potential Changes to the APE.** Please note our request under definition of the APE above, and include throughout this document as necessary.

## **IV. INVENTORY OF HISTORIC PROPERTIES**

**(C.) Changes to the APE.** Please note our request under the definition of APE above.

## **V. TREATMENT OF EFFECTS**

**(A.) Historic Property Treatment Plans.** The Tribes wish to be included in the review and comment of HPTPs that involve resources of value to the Native American community. The PA says that concurring parties may be distributed to the Tribes as concurring parties. We request that this word be changed to “shall”.

**Review Schedule.** The Tribes should be included in the 30-day review period.

**(C.) Final Report.** The Tribes should be offered the draft report and an opportunity to review and comment. A copy of the revised final report shall be provided to the Tribes.

## **VI. NATIVE AMERICANS AND OTHER PUBLIC CONSULTATION AND PUBLIC NOTICE**

The Tribes are not members of the public for purposes of consultation, and should be afforded their full role as specified in the 2001 Final Rule of 36 CFR 800 and the intent within the 1999 revisions to Section 106 of the National Historic Preservation Act.

**IX. AMENDMENTS**

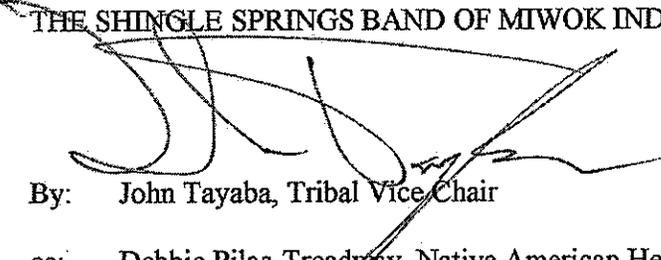
Please include the concurring parties at the table for amendments if the Project has not been completed within five years.

**Concurring Parties Signature Page.** The Tribes should be individually listed and afforded a place for signature on page 10 of 10.

We hope that receipt of this letter will result in a consultation to resolve many of our questions regarding the treatment of historic and culturally significant finds along the Natomas River.

Sincerely,

~~THE SHINGLE SPRINGS BAND OF MIWOK INDIANS~~

  
By: John Tayaba, Tribal Vice Chair

cc: Debbie Pilas-Treadway, Native American Heritage Commission



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

Executive Office

JUN 11 2008

Mr. John Tayaba, Tribal Vice Chair  
Shingle Springs Rancheria  
Post Office Box 1340  
Shingle Springs, California 95682

Dear Vice Chair Tayaba:

I am responding to your May 8, 2008, letter requesting that the Shingle Springs Band of Miwok Indians (The Band) be treated by the U.S. Army Corps of Engineers (Corps) as a "consulting party" for the National Historic Preservation Act (NHPA) Programmatic Agreement (PA) for the Natomas Levee Improvement Program, Landside Improvements Project (NLIP).

Your correspondence indicates you have three primary areas of concern. First, you notified the Corps that The Band is designated as the Most Likely Descendant (MLD) by the Native American Heritage Commission, for certain actions involving the NLIP. Second, requested we investigate the actions of EDAW, a consulting firm to the Sacramento Area Flood Control Agency (SAFCA), regarding its treatment of Native American remains during recent field investigations at the site identified as CA-Sac-485/H. Lastly, you requested to be treated as a consulting party on the NLIP PA and provided substantive comments for our consideration.

We appreciate your desire to be fully engaged with all aspects of the PA. Please find enclosed a copy of the executed PA, dated May 1, 2008. As an alternative to amending the completed PA, the Corps would like invite you to consult on the creation of the Historic Properties Treatment Plan (HPTP). It is our belief that the concerns you expressed in your May 8 correspondence can be adequately addressed in the HPTP. Additionally, upon receipt of your letter the Corps, initiated an inquiry into EDAW's actions, and will share the results of this effort with you as soon as we can meet. While the Corps does not have the authority to direct the activities of EDAW or SAFCA, it has been in close contact with both entities and has recommended EDAW, who is acting through SAFCA, review its MLD procedures with the Native American Heritage Commission. That said, we understand controlled investigations/excavations may be continuing, by-way-of field consultations with input from one of the Band's representatives, as a standard operating procedure. Further, EDAW and SAFCA have assured the Corps that every effort is being made to address the Band's concerns and that they will continue to do so.

The Corps acknowledges that the Shingle Springs Band of Miwok Indians is a federally recognized tribe and desire to meet with you and/or your staff as soon as practicable. In preparation for our meeting, please let me know if I have not fully captured your concerns and if there are any other concerns which we may prepare to address.

Mr. Mark Gilfillan is the District's Tribal Liaison and point of contact for all Sacramento District and Tribal Nation consultations and concerns. Mr. Gilfillan will soon be in contact with you or your designated staff to facilitate and arrange our meeting with dates amenable to The Band. If you have any questions regarding our meeting, please contact Mr. Gilfillan at our Colorado West Regulatory Branch, 400 Rood Avenue, Room 142, email address *mark.a.gilfillan@usace.army.mil*, or telephone (970) 243-1199, extension 15. I look forward to our meeting and addressing your concerns.

Sincerely,

Original Signed

Thomas C. Chapman, P.E.  
Colonel, U.S. Army  
District Engineer

Enclosure

GILFILLAN/tr  
CESPK-RD-C

JACOBSON  
CESPK-RD-C

*MAJ*  
JEWELL  
CESPK-RD-

*CHAPMAN*  
KORPMAN  
CESPK-DC

COWAN *MEC* *ul/ulor*  
CESPK-DE-EA

ALTENDORF  
CESPK-DE-PM

PORTER  
CESPK-DDE

CHAPMAN  
CESPK-DE *TCC*



Sacramento  
Area Flood  
Control  
Agency

June 12, 2008

Mr. John Tayaba

Tribal Vice Chair  
Shingle Springs Rancheria  
P.O. Box 1340  
Shingle Springs, CA  
95682

Dear Mr. Tayaba:

RE: Your letter of May 08, 2008 and our meeting on June 04, 2008.

On behalf of the Sacramento Area Flood Control Agency (SAFCA) we wish to thank you for the opportunity to meet in person last week in the office of the Native American Heritage Commission. This letter is in response to the concerns raised in your letter of May 8, 2008 and at our meeting on June 4<sup>th</sup> regarding the treatment of historic properties that could be affected by the Natomas Levee Improvement Program (Program). This urgently needed Program will address identified deficiencies in the levee system protecting the Natomas Basin and will provide the 80,000 residents of the basin with a high level of protection against potentially catastrophic flooding.

SAFCA values the input of the Shingle Springs Band of Miwok Indians (Band) as we make important decisions about the management of historic properties that could be affected by the Program. We recognize that the Band has a significant role in determining the treatment of historic properties as a consulting party under Section 106 of the National Historic Preservation Act, in addition to your role as the most likely descendant (MLD) under California Public Resources Code Section 5097.98. It is our intention to make every effort to incorporate your input and be responsive to your concerns as we move forward with the Program in a timely fashion. This letter provides a brief discussion of three items of critical concern, and then addresses other issues raised in your letter and at our meeting.

### **Future Steps for 106 Consultations**

The Corps, SAFCA, and the California State Historic Preservation Officer (SHPO) have executed a programmatic agreement (PA) that governs treatment of significant cultural resources that may be affected by the Program. The PA requires consultation with the public and Native American individuals and

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1007 - 7th Street, 7th Floor  
Sacramento, CA 95814-3407

## **Letter to John Tayaba**

**June 12, 2008**

**Page 2 of 4**

organizations (Stipulation VI). We expect to collaborate closely with you as the MLD on behalf of the Band in determining how cultural resources are managed for the Program. For each phase of construction (2008, 2009, 2010) we will consult with you regarding the area of potential effects, the inventory of historic properties, and the management of potentially adverse effects under historic property treatment plans.

### **Excavation of Skeletal Remains at CA-SAC-485/H**

SAFCA's consultant, EDAW, is conducting ongoing excavations at CA-SAC-485/H. This site contains burial features and skeletal remains. In accordance with State law, EDAW contacted the Native American Heritage Commission (NAHC) in early March 2008, during the 2008 season of fieldwork, when human remains were encountered during archaeological excavations needed for compliance with Section 106. The NAHC assigned you as MLD on April 15, 2008. To enlist your input and ensure appropriate treatment of human remains, our Consultant has provided the Band (email of May 21, 2008) with proposed field protocols for dealing with cultural resources and a draft burial treatment plan. The Band's review and comment on these documents would be greatly appreciated.

In your May 8<sup>th</sup> letter you indicate that the burial site may have been inappropriately excavated, and the treatment of the site may not comply with Federal and State law. We are not presently aware of any violation of federal or state law, including your right to determine disposition of human remains under Section 5097.98 of the California Public Resources Code. However, we will conduct an impartial investigation of events at CA-SAC-485/H to determine if the previous activities at the site were in compliance with State and Federal laws as well as standard protocols for site investigation. We will follow up with you as this process moves forward.

### **Independent Peer Review**

As part of our effort to ensure sufficient and appropriate identification and treatment of cultural resources, we are prepared to provide an ethnographer for assistance in the identification process and to retaining consultants acceptable to the Band to conduct an external peer review of EDAW's ongoing efforts and strategy. We have identified Far Western Anthropological Research Group as a firm with regional expertise in archaeology and geomorphology. However, as discussed at the June 4<sup>th</sup> meeting, we would welcome any alternative suggestions you may have regarding a qualified ethnographer and a firm to conduct the peer review.

### **Other Concerns**

#### **1. Definition of Historic Properties**

## **Letter to John Tayaba**

**June 12, 2008**

**Page 3 of 4**

The Band notes that it is appropriate to include traditional cultural places (TCPs) in the definition of historic properties. Eligible and National Register of Historic Places (NRHP) listed TCPs are included in the definition of historic properties in the implementing regulations, and are included in our definitions by reference to the regulations in the PA.

### **2. Ongoing Communication & MLD Liaison**

SAFCA would appreciate your clarification regarding how SAFCA and its consultants should communicate with the MLD, the Band and its representatives. A clear definition of contacts and their specific roles will help us meet your expectations and facilitate cooperation as the project moves forward.

### **3. Modified Construction Methods**

As discussed at our June 4<sup>th</sup> meeting SAFCA's engineering staff are developing a series of modifications to standard construction methods proposed for sensitive historic properties. We will be circulating a memo identifying these methods and hope to discuss them with you when we meet again. As the Band offered during the meeting, SAFCA would appreciate receiving the results of the cultural resources 'damage' study that was prepared for an undisclosed site. This study should assist us as we develop our modified construction methods.

### **4. Final Report**

SAFCA will forward a copy of the draft final report(s) to be prepared per Stipulation V(C) of the PA and will consider the Band's comments in making final revisions to that document.

### **Summary**

SAFCA seeks to accomplish the Program in a manner which is respectful and sensitive to Native American heritage. We appreciate your input and welcome your continued assistance in implementing the PA and managing historic properties associated with this important Program. We also look forward to hosting you on a Program field trip at a mutually convenient time. Please contact Peter Buck at 916-874-4581 if you have any questions or need further information, and please coordinate with him by phone or e-mail regarding when you are available to meet with the PA signatories.

Sincerely yours,



Stein M. Buer  
Executive Director

**Letter to John Tayaba**

**June 12, 2008**

**Page 4 of 4**

cc.

Col. Thomas C. Chapman, District Engineer, US Army Corps of Engineers.

Larry Myers, Executive Secretary, Native American Heritage Commission.

Dwight Dutchske, Assoc. Park & Recreation Specialist, State Historic  
Preservation Office.

Brigit Barnes, Attorney for the Band, Brigit S. Barnes & Associates Inc.

Michelle LaPena, Attorney, LaPena Law Corporation.



Sacramento  
Area Flood  
Control  
Agency

July 23, 2008

Janis Offermann  
Senior Environmental Planner  
Department of Water Resources  
Division of Environmental Services  
Environmental Compliance and Evaluation Branch  
1725 23rd Street, Suite 220  
Sacramento, CA 95816

Dear Ms. Offermann:

The Sacramento Area Flood Control Agency (SAFCA) is constructing the Natomas Levee Improvement Program (NLIP), Landside Improvements Project. This project will provide necessary improvements to the levee system that surrounds the Natomas Basin, including portions of Sutter County, Sacramento County and the City of Sacramento, California. This project requires permits and authorization from the U.S. Army Corps of Engineers (Corps) to discharge fill to waters of the United States and to modify federal flood control structures. These federal actions require that the Corps comply with Section 106 of the National Historic Preservation Act (NHPA).

Section 106 mandates that federal agencies consider the effects of their undertakings on historic properties and allow the Advisory Council on Historic Preservation (ACHP) a reasonable time to comment on the action. Historic properties are cultural resources such as archaeological sites, historic buildings and objects, and traditional cultural places that are listed on, or are eligible for listing on, the National Register of Historic Places (NRHP).

Compliance with Section 106, as defined in Part 800 of Title 36 of the Code of Federal Regulations (CFR), normally requires five sequential steps:

- determination of the area in which the undertaking may affect historic properties (also referred to as the area of potential effects or "APE")
- identification of cultural resources within the APE
- evaluation of those resources for listing on the NRHP
- identification of adverse effects on NRHP-eligible resources that would result from the undertaking
- and resolution of adverse effects

The Section 106 process also requires the federal agency to consult with the public, Indian Tribes, and the State Historic Preservation Officer (SHPO) during the identification and evaluation of historic properties and to consider ways to minimize adverse effects of the undertaking on those properties. These steps may occur

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sequentially as the federal agency consults with these parties in the context of routine federal undertakings. For complex undertakings such as the NLIP, however, the Section 106 regulations provide alternate pathways to Section 106 compliance. Agencies may perform phased identification, evaluation, and resolution of adverse effects as an undertaking proceeds, per 36 CFR Part 800.4(b)(2). This section allows a phased management of resources if a specific process is defined in an agreement document such as a programmatic agreement (PA) or memorandum of agreement (MOA).

The Corps, in consultation with SAFCA and the California SHPO, has developed a PA for the NLIP detailing a phased identification, evaluation, and treatment process for this undertaking (a copy of the executed PA is attached for your information and use). This stepwise process will track the phases of project construction during 2008, 2009 and 2010. This phasing is necessary because the Corps must issue separate authorizations and permits under the Rivers and Harbor Act and the Clean Water Act for each year of work. The geographic scale of the construction involved and uncertainty about the exact nature of work for future phases also dictates that the inventory, evaluation, and treatment of historic properties be developed as phases of the NLIP proceed. These circumstances require that historic properties are identified and managed separately for each year of planned project construction. The PA provides for the following steps to comply with Section 106:

- Inventory of historic properties prior to each year of construction, and submission to the Corps and SHPO of an inventory report and APE map for each year (Stipulation III[C], Stipulation IV). This document will evaluate identified resources and make a finding of effects based on the potential of the undertaking to result in adverse effects.
- Resolution of adverse effects by preparation of a historic properties treatment plan for each adversely affected property (Stipulation V[A]).
- Consultation with the public at large and Native American individuals and organizations with cultural ties to the APE.

In summary, SAFCA and the Corps will identify and manage historic properties in phases related to construction activities over the next few years. We understand that this undertaking has the potential to effect historic properties with noteworthy values to both the archaeological and Native American communities. Such resources include CA-SAC-485/H, the remains of a prehistoric site containing numerous features and Native American burials. The full list of potentially affected resources that have been identified within the project area is provided in the Draft Environmental Impact Report (SAFCA, 2007) prepared for the project. We are currently conducting additional archaeological inventory for the 2008 construction season and additional site evaluation efforts are needed for the planned 2009 construction season.

We are contacting you to fulfill the consultation requirements under the PA and to provide you with the opportunity to consult regarding substantive decisions about how to resolve adverse effects on historic properties. This consultation replaces the general

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requirement for public and Native American consultation under the Section 106 regulations because the PA replaces these regulations, in part, for these undertakings. A key part of the consultation process is to provide notice and opportunity to participate in the decision making process to determine how adverse effects will be resolved. We are preparing a draft historic property treatment plan to manage potential adverse effects on CA-SAC-485/H. If you would like to review this document please contact our office to be placed on the distribution list. We are also consulting with the Most Likely Descendant designated for CA-SAC-485/H, Mr. John Tayaba of the Shingle Springs Band of Miwok Indians, as required under state law.

Please contact Peter Buck of SAFCA, at 916-874-4581 or [buckp@saccounty.net](mailto:buckp@saccounty.net) should you have questions or need further information regarding the identification or treatment of historic properties for this undertaking.

Sincerely,



John A. Bassett  
Director of Engineering  
Design Construction Maintenance