

# **APPENDIX C**

## **Draft Programmatic Agreement**

## DRAFT

### PROGRAMMATIC AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS SACRAMENTO DISTRICT, AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

#### REGARDING CONSTRUCTION OF FLOOD CONTROL MEASURES FOR THE LOWER CACHE CREEK, CITY OF WOODLAND AND VICINITY FLOOD REDUCTION STUDY

**WHEREAS**, the U.S Army Corps of Engineers, Sacramento District (COE) has determined that the proposed construction of flood control structures under authority of the Flood Control Act of 1962 (Public Law 87-874), and the Energy and Water Development Appropriations Act of 1993 (Public Law 102-377) (hereinafter, “Undertaking”) for the Lower Cache Creek, Yolo County, CA City Of Woodland and Vicinity Flood Reduction Study (hereinafter, “Project”) may have an effect on properties eligible for inclusion in the National Register of Histories Places (NRHP) (hereinafter, “Historic Properties”); and

**WHEREAS**, the COE has consulted with the California Department of Water Resources (DWR) and has determined, in consultation with SHPO, to invite them to be a full signatory to this Programmatic Agreement (PA); and

**WHEREAS**, the COE has consulted with the City of Woodland (City) and has determined in consultation with SHPO to invite them to be a full signatory to this Programmatic Agreement; and

**WHEREAS**, the Rumsey Rancheria of Wintun Indians, participated in consultation and have been invited to concur in this PA; and

**WHEREAS**, this PA addresses all phases and segments of the project; and

**WHEREAS**, the definitions set forth in 36 CFR 800.16 are incorporated herein by reference and apply throughout this PA;

**WHEREAS**, the COE has consulted with the Advisory Council on Historic Preservation (Council) to determine whether the Council wishes to enter into the Section 106 process; and

**NOW, THEREFORE**, the COE, the SHPO, DWR, and the City agree that the proposed undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties and to satisfy the COE' Section 106 responsibilities for all individual aspects of the Undertaking.

### STIPULATIONS

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

## **Stipulation I**

### Inventory, Evaluation, and Effect Determination

- A. The Area of Potential Effects (APE) for the Undertaking has been established by the COE in consultation with the SHPO and is described in (ATTACHMENT 1).
- B. COE shall complete and report the results of all required intensive surveys of the undertaking's APE in a manner consistent with the "Secretary of the Interior's Standards and Guidelines for Identification" (48 FR 44720-23) and taking into account the NPS publication, "The Archeological Survey: Methods and Uses" (1978: GPO stock #024-016-00091). This will include areas not previously surveyed and areas where previous surveys are deemed by the COE, in consultation with the SHPO, to be inadequate. This will also include additional areas that may be affected by changes in the project design, borrow areas, haul roads, staging areas, extra work space, and other ancillary areas related to the undertaking.
- C. COE shall ensure that reports of the results of any and all inventories shall be submitted for review concurrently to the City, SHPO, and appropriate Native American groups. Reviewers shall have thirty (30) calendar days to complete their review and provide comment.
- D. COE shall ensure that an Archeological Testing Plan (ATP) consistent with the "Secretary of the Interior's Standards and Guidelines for Evaluation" (48 FR 44723-26) is prepared. COE shall submit the ATP for concurrent review to Butte City, SHPO, and appropriate Native American Groups. A Discovery Treatment Plan (DTP) and a Construction Monitoring Plan (CMP) shall be developed as components of an ATP. The ATP shall be employed whenever the COE, in consultation with the SHPO, determines that an historic property should be evaluated and that use of the ATP is essential to the feasibility of the re-evaluation; or whenever the COE, in consultation with the SHPO, determines that testing would help to accommodate both the needs of the undertaking and the appropriate consideration of historic properties.
- E. Reviewers shall have 30 calendar days after receipt to comment on the draft ATP. The COE shall ensure that any comments received within that time period are taken into account and incorporated into the final ATP. Disputes shall be resolved by the COE in accordance with Stipulation VIII below. Failure of the SHPO to comment within the specified time period shall not preclude the COE from allowing the draft ATP to be finalized and implemented in accordance with the terms of this Stipulation. The COE shall ensure that the SHPO is expeditiously provided with copies of the final ATP.
- F. COE in consultation with SHPO shall ensure that determinations of eligibility are made in accordance with the criteria set forth in 36 CFR 60.4 for all properties within the APE, including additional areas that may be affected by changes in the project design, borrow areas, haul roads, staging areas, extra work space, and other ancillary areas related to the undertaking. The COE shall ensure that copies of draft survey and evaluation reports are submitted concurrently to the SHPO, the City, interested Native American groups, and

interested parties for review and comment. Further, COE shall seek comments from all potentially interested Native American groups in light of the guidance provided in National Register Bulletin 38 in making determinations of eligibility for any Traditional Cultural Properties as these are defined in the Bulletin.

- G. If the COE and the SHPO cannot agree on the National Register eligibility of a property, the COE shall obtain a determination from the Keeper of the National Register in accordance with 36 CFR 63. The determination of the Keeper shall be final for purposes of this PA.
- H. COE shall apply the Criteria of Adverse Effect pursuant to 36 CFR 800.5(a)(1) to all historic properties within the APE.
- I. All reviewers shall have 30 calendar days after receipt to provide comments to the COE. The COE shall ensure that any comments received during this time period are taken into account and incorporated into the final survey and evaluation reports. Disputes shall be resolved by the COE in accordance with Stipulation VIII below.
- J. Failure by any reviewer to comment within this time period shall not preclude the COE from allowing draft reports to be finalized. The COE shall ensure that all reviewers named in this Stipulation shall expeditiously receive copies of all final survey and evaluation reports.
- K. Additional required surveys shall be conducted and reports prepared by or under the direct supervision of persons that meet the "Secretary of the Interior's Professional Qualifications Standards" (48 FR 44738-9), (hereafter, "Qualification Standards").

## **Stipulation II**

### Preparation of Historic Property Treatment Plans

- A. Further treatment plans shall be developed by persons meeting the Qualifications Standards and shall be consistent with the "Secretary of the Interior's Standards and Guidelines for Archeological Documentation" (48 FR 44734-37) and take into account the Council's publication, "Treatment of Archeological Properties" (Advisory Council on Historic Preservation, 1980), subject to any pertinent revisions the Council may make in the publication prior to completion of the treatment plan and research design, and relevant SHPO guidance. At a minimum, the Historic Property Treatment Plan (HPTP) shall address the following:
  - 1. the historic properties or portions of historic properties where treatment will be implemented;
  - 2. any historic properties or portions of historic properties that will be destroyed or altered without treatment;
  - 3. a Research Design that will contain the research questions and goals that are applicable to the Project area as a whole and that will be addressed through data recovery, along with an explanation of their relevance and importance. These

research questions and goals shall reflect the concepts of historic contexts as defined in National Register Bulletin 16.

4. the field and analysis methods to be used, with an explanation of their relevance to the research questions;
5. the methods to be used in data management and dissemination of data, including a schedule;
6. the proposed disposition of recovered materials and records;
7. proposed methods for disseminating results of work to the interested public;
8. proposed methods by which appropriate Native American groups and individuals, local governments and other interested persons will be kept informed about implementation of the HPTP and afforded an opportunity to comment;
9. a proposed schedule for submission of progress reports to the COE, SHPO, DWR and the City;
10. methods and procedures for the recovery, analysis, treatment, and disposition of human remains, associated grave goods, and objects of cultural patrimony that reflect any concerns and/or conditions identified as a result of consultations between COE and any affected Native American Group (see VII below).

B. Each phase or segment specific Treatment Plan shall represent a dependent plan and document supplement to the Treatment Plan (STP) providing specific direction for the conduct of data recovery within any Project segment. It shall conform to the general requirements of the HPTP. At a minimum, it shall specify:

1. The historic properties to be affected in the specified Project segment and the nature of those effects.
2. The research questions identified in the HPTP that will be appropriate for the specified Project segment and that will be addressed through data recovery, along with any explanation of their relevance to the overall research goals as established in the HPTP.
3. The specific fieldwork and analytical strategies identified in the HPTP, as well as any other strategies that will be employed in the specified Project segment.
4. A proposed schedule for submission of progress, summary, and other reports to COE, DWR, and the City.
5. Qualifications of consultants employed to undertake the implementation of the STP.

D. Treatment Approach and Preservation In-Place of Historic Properties. Avoidance of adverse effects on historic properties is the preferred treatment approach. The HPTP will discuss and justify the chosen approach(es) to the treatment of project historic properties and those treatment options considered, but rejected. If preservation of part or all of any historic properties is proposed, the treatment plan will include discussion of the following:

1. Description of the area or portion(s) of the historic properties to be preserved in-place, and an explanation of why those areas or portions of sites were chosen;
2. Explanation of how the historic properties will be preserved in-place, including both legal and physical mechanism for such preservation;
3. A plan for monitoring and assessing the effectiveness of mechanisms to preserve the historic properties; and

4. A plan for minimizing or mitigating future adverse effects on the historic properties, should preservation in-place mechanisms prove to be ineffective.
- E. Public Involvement Provisions. Public involvement will occur according to the following provisions:
1. Discussion of the views of the interested public, including Native American tribes, on the identification, evaluation, and treatment of historic properties;
  2. Discussion of how their views have been addressed within the Treatment Plan; and,
  3. Discussion of proposed means for continuing to involve the public in the future.

### **Stipulation III**

#### Review of Treatment Plan and Supplemental Treatment Plan(s)

The COE shall ensure that draft HPTP's and STP's are submitted concurrently to the SHPO, DWR, the City, and appropriate Native American group(s) and individuals for review and comment. Reviewers shall have 30 calendar days after receipt of the draft HPTP to comment to the COE. The COE shall ensure that any comments received during this time period are taken into account and incorporated into the final HPTP. Disputes shall be resolved by the COE in accordance with Stipulation VIII below. Failure to comment within this time period shall not preclude the COE from allowing the HPTP to be finalized and implemented. The COE shall ensure that all reviewers are expeditiously provided with copies of the final HPTP.

- A. If revisions are needed, any party, including SHPO, has 20 days to review the revisions. If no comments are received within 20 days, concurrence among the parties will be assumed.
- B. Once the HPTP is determined adequate by the reviewing parties, COE shall issue authorization to proceed with the development of STP(s).
- C. Once the STP(s) is/are determined adequate by the reviewing parties, COE shall issue authorization to proceed with the implementation of the Plan(s).
- D. Final drafts of the HPTP and all subsequent STP(s) will be provided to SHPO and the.

### **Stipulation IV**

#### Modifications in Construction, Right-of-Way and Ancillary Areas

- A. Identification and Evaluation
  1. If rerouting a portion of the proposed ROW becomes necessary or if activities are proposed in Ancillary Areas (AAs) (e.g., borrow or disposal areas) that have not been previously surveyed for historic properties, the COE shall ensure that the APE of the proposed reroute or unsurveyed AA is inventoried and that any properties located within those APE's that may be affected by the undertaking are evaluated.
  2. Identification and evaluation of such properties will be carried out in the manner specified in Stipulation I.A.-N., inclusive, except as noted below.

- B. Supplemental Treatment Plans (STP)
1. Where historic properties within the rerouted ROW or AAs may be affected by the undertaking, the COE shall ensure that specific Supplemental Treatment Plans (STP) are prepared.
  2. The STP's shall be prepared in the manner specified in Stipulation II. A.-B., inclusive, except as noted below.
- C. Review of STP(s)
1. Review of STP(s) shall proceed in the manner specified in Stipulation III, above except as noted below.
- D. Optional Expedited Review
1. At its discretion, the COE may decide that all documents required by Section A.-C., inclusive, of this Stipulation shall be submitted concurrently in a single package only to the SHPO, and appropriate Native American group(s) and individuals for review and comment.
  2. Reviewers shall have 20 calendar days from receipt of such documents to provide the COE with comments. The COE shall ensure that any comments received during this time period are taken into account and incorporated into the final versions of such documents. Failure to comment within this time period shall not preclude the COE from assuming that the documents are acceptable to the reviewers and from allowing implementation of the STP. The COE shall ensure that all reviewers named in this Stipulation are expeditiously provided with copies of final versions of all documents.
- E. The COE may authorize construction in any area subject to the provisions of this Stipulation after the COE and the SHPO have consulted and agreed in writing that such construction either will not affect historic properties or that the area does not contain historic properties and that the area will be monitored in accordance with the CMP and DTP included in the STP cited in Section B. of this Stipulation.

#### **Stipulation V**

##### Implementation of Construction

- A. The COE may authorize any Applicant to proceed with construction in any area after the COE and the SHPO have consulted and concurred that: (1) such construction will not affect historic properties, or (2) the area does not contain historic properties, (3) historic properties have been satisfactorily mitigated, and (4) that the proposed construction will be monitored in accordance with the Monitoring and Property Discovery Plans cited in Stipulation II.A. of this PA.
- B. In accordance with this PA, the COE shall ensure that historic properties are protected against damage until the applicable treatment measures are implemented.

#### **Stipulation VI**

## Curation

The COE shall ensure that all cultural materials and associated records resulting from identification, evaluation and treatment efforts conducted under this PA are curated in accordance with 36 CFR Part 79, except as specified in Stipulation VII below. Archaeological items and materials from privately owned lands to be returned to their owners shall be maintained in accordance with 36 CFR 79 until any specified analyses are complete.

### **Stipulation VII**

#### Native American Consultation and Treatment of Human Remains

- A. The COE in consultation with City and SHPO will ensure that Native Americans are consulted during, and may participate in, implementation of the terms of this PA. The specific manner in which this Native American involvement will occur will be set forth in the HPTP(s).
- B. COE with the cooperation of the City will ensure that Native American human remains and items associated with Native American burials are treated in accordance with the requirements of §§ 5097.98. and 5097.991. of the California Public Resources Code.

### **Stipulation VIII**

#### Dispute Resolution

Should any signatory to this PA object within 30 calendar days to plans provided for review pursuant to this PA or to actions proposed or carried out pursuant to this PA, the COE shall notify the other signatories to this PA and consult to resolve the objection. If the COE determines that the objection cannot be resolved, the COE shall forward all documentation relevant to the dispute to the Council. Within 45 days after receipt of all pertinent documentation, the Council shall either:

- A. provide the COE with recommendations, which the COE shall take into account in reaching the final decision regarding the dispute; or
- B. notify the COE that it will comment pursuant to 36 CFR Sec. 800.7, and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by the COE in accordance with 36 CFR Sec. 800.7 with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The COE's responsibility to carry out all actions required by this PA that are not subject of the dispute shall remain unchanged.

### **Stipulation IX**

#### Provision for Annual or Biannual Review of PA

The COE, SHPO, DWR, and the City shall consult annually or biannually to review implementation of the terms of this PA and determine whether revisions are needed. If revisions

are needed, the parties to this agreement will consult in accordance with 36 CFR 800 to make such revisions.

### **Stipulation X**

#### Amendments, Noncompliance, and Termination

- A. If any signatory believes that the terms of this PA cannot be carried out, or are not being met, or that an amendment to its terms should be made, that signatory will immediately consult with the other signatories to consider and develop amendments to this PA pursuant to 36 CFR § 800.6(c)(7) and 800.6(c)(8).
- B. If this PA is not amended as provided for in this Stipulation, COE, the SHPO, DWR, or the City may terminate it. The party terminating the PA will in writing provide all other signatories with an explanation of the reasons for termination.
- C. If this PA is terminated and the COE determines that the Undertaking authorizing the Project will proceed, the COE shall comply with 36 CFR § 800.14(b)(2)(v).

### **Stipulation XI**

#### Duration of the PA

- A. If the Project has not been implemented within five (5) years of the date of execution of the PA, and the PA had not been terminated, the signatories shall consult on a date not less than 90 days prior to the fifth anniversary of this PA to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment or termination. If the PA is terminated because the Undertaking no longer meets the definition of an “Undertaking” set forth in 36 CFR § 800.16(y), Stipulation X(C) shall apply.
- B. This PA will be in effect through COE’s implementation of the Undertaking, and will terminate and have no further force or effect when COE, in consultation with the other signatories, determines that the terms of this PA have been fulfilled in a satisfactory manner and/or COE involvement in the project has ended. COE will provide the other signatories with written notice of its determination and of termination of this PA.

### **Stipulation XII**

#### Effective Date

This PA shall take effect on the date that it has been fully executed by the COE and the SHPO.

EXECUTION of this PA by COE, the City, and the California SHPO, its transmittal to the Council, and subsequent implementation of its terms, evidence that the COE has afforded the Council an opportunity to comment on the Undertaking and its effects on historic properties, that the COE has taken into account the effects of the Undertaking on historic properties, and that the COE has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and applicable implementing regulations for all aspects of the Undertaking.

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

John P. Conrad, Colonel, Corps of Engineers, District Engineer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Dr. Knox Mellon

Concur:

CITY OF WOODLAND

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE:

CALIFORNIA DEPARTMENT OF WATER RESOURCES

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE:

Concur:

RUMSEY INDIAN RANCHERIA OF WINTUN INDIANS

BY \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: