

Appendix H

**Draft National Historic Preservation Act
Section 106 Programmatic Agreement**

**PROGRAMMATIC AGREEMENT
AMONG THE
U.S. ARMY CORPS OF ENGINEERS, WEST SACRAMENTO AREA FLOOD
CONTROL AGENCY, AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, REGARDING THE
SOUTHPORT SACRAMENTO RIVER EARLY IMPLEMENTATION PROJECT,
YOLO COUNTY, CALIFORNIA**

WHEREAS, the West Sacramento Area Flood Control Agency (WSAFCA) proposes to implement the Southport Sacramento River Early Implementation Project (Project) to construct flood risk–reduction measures along the Sacramento River South Levee in the city of West Sacramento, Yolo County, California. WSFCA is an invited signatory to this agreement because the United States Army Corps of Engineers (Corps) will grant them permit for this Project. The primary purpose of the Southport project is to provide flood risk management for the entire city of West Sacramento. Secondary purposes of the Southport Project are to provide ecosystem restoration and public recreation opportunities that are compatible with flood risk–reduction measures. (For more details on the project see Attachment A: Description of the Project and Undertakings); and

WHEREAS, this undertaking involves levee and infrastructure alterations (See Attachment A) to the Sacramento River Flood Control Project (SRFCP) and therefore requires authorization from the Corps to modify federal levees under Section 14 of the River and Harbors Act (33 U.S.C § 408) and also requires a permit to discharge fill to waters of the United States under Section 404 of the Clean Water Act (33 U.S.C § 1344), and these actions constitute undertakings requiring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, the final identification and evaluation of historic properties will be deferred as permitted by 36 C.F.R. § 800.4[b] [2] because the project is being constructed in phases and the final design for the proposed work is not complete; and

WHEREAS, the State of California Central Valley Flood Protection Board (CVFPB) is the non-Federal sponsor for the Project and authorizes modifications to affected levees (California Water Code Section 8710) the CVFPB has been invited to be a Concurring Party to this Agreement; and

WHEREAS, this Agreement shall establish the process the Corps shall follow for compliance with 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f, referred to hereinafter as “Section 106”), taking into consideration the views of the Signatory and Concurring Parties; and

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WHEREAS, the presence of levees, alluvial deposition, and other built environment features have obscured the presence of cultural resources and a full assessment of archaeological sites cannot be made in advance of construction; and

WHEREAS, the levees of the Sacramento River are the one known potential Historic Property within the area of potential effect (APE) that will be affected by the Project; and

WHEREAS, the Corps is aware that there is a high probability for buried cultural resources that may not be identified prior to construction and that also may be eligible for inclusion in the NRHP, and therefore this Agreement documents a framework for managing post-review discoveries per 36 C.F.R. § 800.13; and

WHEREAS, the Corps, in consultation with the State Historic Preservation Officer (SHPO), has decided to comply with Section 106 of the NHPA for the Undertaking through the execution and implementation of this Programmatic Agreement (Agreement) because the Corps cannot fully determine the effects of the Undertaking on Historic Properties [36 C.F.R. § 800.14(b)(1)(ii)], for all phases and segments of the Project at this time; and

WHEREAS, in accordance with 36 C.F.R. §§ 800.2(C)(2)(ii)(A), 800.3(f)(2), and 800.14(b)(2)(i), the Corps has contacted the Buena Vista Rancheria of the Me-Wuk Indians of California, the Lone Band of Miwok Indians of California, the United Auburn Indian Community of the Auburn Rancheria, the Wilton Rancheria, the Yocha Dehe Wintun Nation, and interested Native American Tribal governments and individuals to consult on the undertaking and the preparation of this Agreement; and

WHEREAS, the Buena Vista Rancheria of the Me-Wuk Indians of California, the Lone Band of Miwok Indians of California, and the Wilton Rancheria, have communicated with the Corps either verbally, or via correspondence that they defer to the Yocha Dehe Wintun Nation to consult on this project; and

WHEREAS, the Corps has consulted with the Yocha Dehe Wintun Nation and United Auburn Indian Community, invited them to be a concurring party to this Agreement, and will continue to consult with them on this undertaking; and

WHEREAS, the definitions set forth in 36 C.F.R. § 800.16 are incorporated herein by reference and apply throughout this Agreement; and

WHEREAS, the definitions for Signatory Parties set forth in 36 C.F.R. § 800.6(c)(1), and the definitions for Concurring Parties set forth in 36 C.F.R. § 800.6(c)(3), are incorporated herein by reference and apply throughout this Agreement; and

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WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps notified and invited the Advisory Council on Historic Preservation (ACHP) per 36 C.F.R. § 800.6(a)(1)(C) to participate in consultation to resolve potential adverse effects of the Project, including development of this Agreement, and the ACHP has declined to participate pursuant to 36 C.F.R. § 800.6(a)(1)(iii) in a letter dated May 9, 2013; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii), the Corps has notified the public of the Project and provided an opportunity for members of the public to comment on the Project and the Corps process for complying with Section 106 process as outlined in this Agreement; and

NOW, THEREFORE, the signatories agree that the 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 Corps' Section 106 responsibilities for all individual aspects of the undertaking.

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

STIPULATIONS

I. Applicability and Scope, Relationship to Other Agreements (A) Applicability and Scope

1. This Agreement applies to all portions of the undertaking within the Area of Potential Effect (APE) developed for each phase of the Project where the undertaking could adversely affect historic properties.

(B) Conflicts with Other Agreement Documents

This Agreement does not negate or supersede any agreements governing the project area or vicinity, between Corps and Indian tribes in effect at the time the Agreement is executed, nor does it negate or supersede any agreement documents executed within the project area or vicinity between the Corps and the SHPO pursuant to 36 C.F.R. Part 800. If any agreement between the Corps and Indian Tribes or between the Corps and the SHPO in effect at the time the agreement is executed is found to be in conflict with this Agreement, the respective signatories will confer to resolve the conflict per Stipulation XV Dispute Resolution. If the resolution results in a proposed amendment to this Agreement, the provisions under Stipulation XVII. Amendments will be followed. Resource specific treatment plans will supersede the HPMP in cases where there may be conflict between the two documents.

II. TIME FRAMES AND REVIEW PROCEDURES

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- A.** For all documents and deliverables produced in compliance with this Agreement, the Corps will have thirty (30) calendar days to review. After completing its review, the Corps shall provide a hard copy draft document via mail to the SHPO, Concurring Parties, and Native American interested parties and Tribes for review. Any written comments provided by the SHPO, Concurring Parties, and Native American interested parties and Tribes, within thirty (30) calendar days from the date of receipt, shall be considered in the revision of the document or deliverable. The Corps shall document and report the written comments received for the document or deliverable and how comments were addressed. The Corps shall provide a revised final document or deliverable to the SHPO for concurrence. The SHPO shall have thirty (30) calendar days to respond. Failure of the SHPO, Concurring Parties, and Native American interested parties and Tribes to respond within thirty (30) calendar days of any submittal shall not preclude Corps from moving to the next step in this Agreement.
- B.** Should the SHPO object to the final document or deliverable submitted for concurrence, the Corps and SHPO shall consult for a period not to exceed fifteen (15) calendar days following the receipt of the SHPO's written objection in an effort to come to agreement on the issues to which the SHPO has objected. Should the SHPO and the Corps be unable to agree on the issues to which the SHPO has objected, the SHPO and the Corps shall proceed in accordance with **Stipulation XIV (Dispute Resolution)**, below. The timeframe to consult to resolve a disagreement or objection may be extended by mutual consent of the Corps and the SHPO. WSAFCA and the Corps may combine inventory, evaluation, and findings of effect management steps in one document.
- C.** Notwithstanding the requirements in this **Stipulation II (Time Frames and Review Procedures)** or **Stipulation XIV (Dispute Resolution)**, any Signatory party may, at any time, request to meet with the other Signatories to discuss implementation of this Agreement.

III. AREA OF POTENTIAL EFFECTS

The Corps will define the APE for each phase or discrete activity of the Project. WSAFCA or its contractor will prepare draft APEs for each phase or discrete activity for review and approval by the Corps. Draft phase- or activity-specific APEs will be submitted to the SHPO for review prior to completing phased inventories. Prior to activities under **Stipulation IV (Identification and Evaluation)**, the Corps shall submit to the SHPO, Concurring Parties, and Native American interested parties and Tribes a map of the APE for the current phase and a description of the Project activities occurring for that phase, in accordance with **Stipulation II (Timeframes and Review Procedures)**. Revisions to the APE will not necessitate modifications to this Agreement.

- A.** For purposes of this Agreement, the APE for each phase shall be defined to meet, at a minimum, the following criteria:

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The APE for any segment of the levees that are being improved as part of the phase of the Project shall include the levee segment and a corridor extending not less than 150 meters from the landside toe of the levee segment.

B. The APE also shall include:

- (1) The extent of all Project construction and excavation activity required to construct flood control facilities and to modify irrigation and drainage infrastructure; and
- (2) Any right-of-way or easement areas necessary for of the construction, operation, and maintenance of the Project; and
- (3) All areas used for excavation of borrow material and habitat creation; and
- (4) All construction staging areas, access routes, utilities, spoil areas, and stockpiling areas.

C. After the APE has been defined and consulted on in accordance with this stipulation, construction or other Project activities may require revisions to the APE. If the APE is revised, the Corps shall consult on that revision in accordance with **Stipulation II (Timeframes and Review Procedures)**, and the Corps shall determine the potential for Project activities in a revised APE to affect potential Historic Properties, in accordance with the approved Historic Properties Management Plan.

IV. HISTORIC PROPERTIES MANAGEMENT PLAN

WSAFCA, in consultation with the Signatories, Concurring Parties, and Native American interested parties and Tribes, shall develop a Historic Property Management Plan (HPMP), which provides the framework by which remaining identification, evaluation of eligibility, findings of effect, and resolution of adverse effect efforts to Historic Properties will occur. The HPMP shall include consideration of property types, treatment of property types, expected methodology for identification and evaluation of potential historic properties, potential templates for work plans, provisions for avoidance or protection of historic properties, and consideration for identification and treatment of human remains. The HPMP shall be appended to this Agreement (**Attachment B**) and will form the basis for any Historic Property Treatment Plans (HPTPs) that may be required for one or more phases of the Project. The HPMP shall be developed after execution of the Agreement, but before construction commences. For the overall Project and individual phases, the HPMP shall be the means for the Corps to comply with 36 C.F.R. § 800.6 and provide standardized methods for dealing with unanticipated discoveries in accordance with 36 C.F.R. § 800.13(a). The HPMP may be amended and appended to this Agreement without amending the Agreement. In the event of any conflicts between the HPMP and this Agreement, the terms of this Agreement shall take precedence.

- A. Review:** The Corps shall review the Draft HPMP before sending to the SHPO, Concurring Parties, and Native American interested parties and Tribes for review and comment pursuant to **Stipulation II (Timeframes and Review Procedures)**.
- B. Historic Property Treatment Plans:** The Corps shall consult the SHPO, pursuant to 36 C.F.R. § 800.5, when the Corps has determined that a Project activity will result in adverse effects to a Historic Property. An HPTP specific to the phase of the Project or the Historic Property will be drafted by WSAFCA or its contractor to describe how they intend to resolve adverse effects and that HPTP may be appended to the HPMP. HPTPs shall be consistent with the HPMP and may incorporate by reference historic contexts, methods, procedures, and research designs, as appropriate. When incorporating portions of the HPMP by reference, the HPTP shall at a minimum include the date of the HPMP and where the HPMP is available to be viewed.
- (1) An HPTP may address individual or multiple Historic Properties or Historic Property types. An HPTP shall stipulate those actions the Corps shall take to resolve the adverse effects of the Project on Historic Properties within the project phase or specific action specified by the HPTP. For properties eligible under criteria specified in 36 C.F.R. § 60.4 (A) through (D), mitigation other than data recovery may be considered in the treatment plan (e.g., HABS/HAER, oral history, historic markers, exhibits, interpretive brochures or publications, or other means as deemed appropriate by the signatories). In addition to the SHPO, Concurring Parties, and Native American interested parties and Tribes the Corps may invite the interested public, in accordance with **Stipulation XIII (Public Consultation and Public Notice)**, to comment on the means of mitigation, as appropriate. HPTPs shall include specifications (including content and number of copies) for publication of brochures, pamphlets or synthesis reports for distribution to the general public. The Corps shall ensure that all provisions of an HPTP are carried out as stipulated in the HPTP.
- (2) HPTPs will be submitted and reviewed in accordance with **Stipulation II (Timeframes and Review Procedures)**, except for those HPTPs developed for Historic Properties discovered during construction activities, which shall follow the review timeframes identified in **Stipulation IX (Discovery of Unknown Historic Properties)**. Circulation of an HPTP shall not include a recirculation of the HPMP.
- D. Reporting:** Reports and other data pertaining to the inventory of Historic Properties and the treatment of effects to Historic Properties will be distributed to Concurring Parties to this Agreement, Native American Tribes, and other members of the public, consistent with **Stipulation XIV (Confidentiality)** of this Agreement, unless parties have indicated that they do not want to receive a report or data.

- E. Amendments/Addendums/Revisions:** If an Historic Property type that is not covered by an existing HPTP is discovered within the APE subsequent to an initial inventory effort for a phase, or if there are previously unexpected effects to an Historic Property, and the Corps and SHPO agree that the Project may adversely affect the Historic Property, WSAFCA shall prepare an addendum to the HPTP or a new HPTP for review by the Corps. The Corps shall then submit the document to the SHPO, Concurring Parties, and Native American interested parties and Tribes for review and comment, and shall follow the provisions of **Stipulation IX (Discovery of Unknown Historic Properties)**. The HPTP may cover multiple discoveries for the same property type.
- F. Data Recovery:** When data recovery is proposed, the Corps, in consultation with the SHPO and consulting parties, shall ensure that HPTPs developed by WSAFCA or its consultant are consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999).
- G. Final Phase Report Documenting Implementation of the Historic Properties Treatment Plan(s):** Within one year after the completion of all work for each phase of the Project, WSAFCA shall submit a Final Phase Report to the Corps documenting the results of all work prepared for that phase under the HPTPs, and the information learned from each of the Historic Properties. The Corps shall then submit the document to the SHPO, Signatory Parties, Concurring Parties, and Native American interested parties and Tribes. The submittal of the Final Phase Report shall be in accordance with **Stipulation II (Timeframes and Review Procedures)**.

V. IDENTIFICATION AND EVALUATION

Should the HPMP not be finalized at the time that a phase of the Project may be ready to proceed to construction, WSAFCA shall notify the Corps and the Corps shall consult with the Signatory Parties before construction begins on any phase of the Project. Should the Signatory Parties agree that the work may proceed, WSAFCA and the Corps shall comply with **Stipulation V A., B., and C. (Identification and Evaluation)** and, as necessary, **Stipulation VI (Determination of Effects)**. WSAFCA shall complete any identification and evaluation, and as necessary, any evaluation of effects to Historic Properties prior to proceeding with construction. If the Signatory Parties do not agree to proceed with the phase of the Project, WSAFCA and the Corps shall follow **Stipulation XV. (Dispute Resolution)**.

- A. Identification of Potential Historic Properties:** WSAFCA will prepare an inventory of Historic Properties within the Project APE, consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716–44740), or for individual phases of the Project, as construction details become available.

Survey recordation shall include archaeological sites, features, historical structures and buildings, historical engineering features, landscapes, viewsheds, and traditional cultural properties (TCPs), and re-recordation of previously recorded sites, as necessary. Recordation of historic structures, buildings, objects, and sites shall be prepared using the California Department of Parks and Recreation (DPR) 523 Record forms.

B. Property Types Exempt from Evaluation: Attachment C to this Agreement lists the property types that the Signatories agree shall be exempt from evaluation as determined by the Corps in consultation with the SHPO. WSAFCA shall evaluate all other identified properties in accordance with **Stipulation V.C (Evaluation of Potential Historic Properties)**.

C. Evaluation of Potential Historic Properties: After recordation on DPR 523 Site Record forms, potential Historic Properties shall be evaluated by a qualified professional, as defined in **Stipulation VII (Qualifications)**, for their eligibility for listing in the NRHP consistent with the *Secretary of Interior's Standards for Evaluation*, 36 C.F.R. § 60.4. In accordance with **Stipulation II (Timeframes and Review Procedures)**, WSAFCA shall submit a completed inventory and evaluation for each phase of Project work.

VI. DETERMINATION OF EFFECTS

Avoidance of adverse effects to Historic Properties is the preferred treatment approach. WSAFCA will consider redesign of Project elements in order to avoid Historic Properties and Project effects that may be adverse. However, it may not be possible to redesign the Project in order to avoid adverse effects to Historic Properties.

The Corps will apply the criteria of adverse effect, pursuant to 36 C.F.R. § 800.5(a)(1), to all Historic Properties within the APE that will be affected by the Project. WSAFCA shall prepare determinations of effects which will then be submitted to the Corps for review. The Corps shall then consult on determinations of effects in accordance with **Stipulation II (Timeframes and Review Procedures)**.

If effects to Historic Properties are determined to be adverse, **Stipulation IV.B. (Historic Property Treatment Plans)**, above, will be followed.

VII. QUALIFICATIONS

A. Professional Qualifications: All technical work required for historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for archeology or history, as appropriate (48 FR 44739). "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery excavation or

recordation of potential Historic Properties that is required under this Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated Project consultants.

B. Historic Preservation Standards: Historic preservation activities carried out pursuant to this Agreement shall meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740), as well as standards and guidelines for historic preservation activities established by the SHPO. The Corps shall ensure that all reports prepared by WSAFCA pursuant to this Agreement, are consistent with 36 CFR 800.11, will be provided to the Signatories, Concurring Parties, and Native American interested parties and Tribes and are distributed in accordance with **Stipulation XIV (Confidentiality)**, and meet published standards of the California Office of Historic Preservation, specifically, *Preservation Planning Bulletin* Number 4(a), "Archaeological Resources Management Reports (ARMR): Recommended Contents and Format" (December 1989).

C. Archeological Monitor Standards: Archeological monitoring activities required for exploratory, construction, or construction related ground disturbing activities implemented pursuant to this Agreement shall be carried out by a person meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for prehistoric or historic archaeology, as appropriate (48 FR 44739). "Archeological monitoring" here includes monitoring ground disturbing activities that have been determined by WSAFCA and the Corps to be occurring in areas potentially sensitive for Historic Properties or buried resources.

VIII. NOTICES TO PROCEED WITH CONSTRUCTION

WSAFCA may issue Notices to Proceed for individual construction segments (**Attachment A**), defined by WSAFCA in its construction specifications, after a Historic Properties inventory has been completed [per **Stipulation IV (Historic Properties Management Plan)** or **Stipulation V (Identification and Evaluation)**], and prior to treatment of adverse effects on Historic Properties within the APE provided that:

- A.** A plan to respond to inadvertent archeological discoveries is prepared by WSAFCA, reviewed by the Corps, and approved by SHPO, prior to the commencement of Project activities anywhere in the APE for that phase of the Project; and
- B.** Project development activities do not encroach within 30 meters (100 feet) of the known boundaries of any Historic Property as determined from archeological site record forms, other documentation, or as otherwise defined in consultation with the SHPO and other parties, as appropriate; and
- C.** An archeological monitor retained by WSAFCA and meeting the professional qualifications as described in **Stipulation VII (Qualifications)**, is present during any Project activities that are anticipated to extend either vertically or horizontally into

any areas designated to be archeologically sensitive by the Corps, in consultation with SHPO, except in phases of construction for slurry walls where visual inspection of the construction area cannot be safely or feasibly accomplished.

IX. POST-REVIEW DISCOVERIES

The Corps is responsible for complying with 36 C.F.R. § 800.13(a) in the event of inadvertent discoveries of Historic Properties during implementation of the Project. The HPMP will provide procedures for complying with post review and inadvertent discoveries of Historic Properties.

If the Signatory Parties agree that construction of a Project phase can begin before the HPMP is finalized and there is a discovery of an unknown Historic Property, the Corps shall follow 36 C.F.R. § 800.13(b). Additionally, the following procedures shall be followed:

- A. **Workforce Training:** During implementation of Project activities, an archeologist retained by WSAFCA meeting the professional qualifications as described in **Stipulation VII (Qualifications)**, will provide training to all construction personnel, before they begin work, regarding proper procedures and conduct in the event that archeological materials are encountered during construction.
- B. **Human Remains:** Treatment of human remains is governed by **Stipulation XII (Tribal Consultation and Treatment of Human Remains)**.

X. CURATION

To the extent that curation is determined to be appropriate mitigation to resolve adverse effects to Historic Properties, curation shall be conducted in accordance with 36 C.F.R. § 79, except those materials identified as Native American human remains and items associated with Native American burials. Archeological items and materials from State or privately owned lands shall be maintained in accordance with 36 C.F.R. § 79 until any specified analyses are complete. Although the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq.) does not apply to this Project, as there is no federally owned or administered property within the APE and the Corps will not be curating cultural materials subject to NAGPRA, this Agreement incorporates by reference the definitions for “human remains” and “funerary objects” set forth in 43 C.F.R § 10.2(d) and those definitions shall apply to actions under this Agreement. Further treatment of human remains is addressed in **Stipulation XII (Tribal Consultation and Treatment of Human Remains)**.

XI. TRIBAL INVOLVEMENT

- A. In consultation with Native American interested parties and Tribes, WSAFCA and the Corps will make a reasonable and good-faith effort to identify Historic Properties of traditional religious and cultural importance. The Corps shall ensure that

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consultation with Native American Tribes continues throughout the duration of the project.

- B.** In accordance with the guidance provided in National Register Bulletin 38 and Preservation Brief 36, the Corps will seek comments from all potentially interested Native American interested parties and Tribes in making determinations of NRHP eligibility for any Traditional Cultural Properties (TCPs) and Cultural Landscapes that may be historic properties. Review of documentation shall be consistent with **Stipulation II (Timeframes and Review Procedures)**.
- C.** Pursuant to 36 C.F.R. § 800.6(c)(2)-(3), the Corps shall consider requests by Native American Tribes to become Concurring Parties to this Agreement. In accordance with **Stipulation XIV (Confidentiality)**, Concurring Parties to this Agreement will receive documents produced under this Agreement, as appropriate.
- D.** Native American Tribes may choose not to sign this Agreement as a Concurring Party. Native American Tribes and individuals not acting as Concurring Parties to the Agreement will be contacted when the Corps identifies potential interest in a specific phase or action of the Project or any Native American Tribes or individuals notify the Corps of an interest in the Project. The Corps will continue to make a good faith effort to identify any Native American organizations and individuals with interest in the proposed treatment of Historic Properties. The identification effort may include contacting the Native American Heritage Commission (NAHC), using online databases, and using personal and professional knowledge. The Corps will then contact each identified organization and individual by mail, phone, email, or other appropriate method, inviting them to consult about the specific treatment of Historic Properties. If the contacted parties express interest in consultation, the Corps will proceed to consult in accordance with this stipulation. Further consultation may also be carried out through either letters of notification, public meetings, environmental assessments/environmental impact statements, site visits, and/or other method requested by a Native American interested party and Tribe. Failure of any contacted group to comment within thirty (30) calendar days shall not preclude the Corps from proceeding with the Project.
- E.** The Corps has made a reasonable and good-faith effort to ensure that Native American Tribes, acting as either Concurring Parties or those expressing interest in the project, and has invited the Tribes to participate in the implementation of the terms of this Agreement, including, but not limited to, the identification of the APE, identification of potential Historic Properties, determinations of eligibility, findings of effect, and the resolution of adverse effect for those Historic Properties. Review periods shall be consistent with **Stipulation II (Timeframes and Review Procedures)** except in situations involving unanticipated discoveries and treatment, which shall follow the review schedules of **Stipulation IX (Post Review Discoveries)**. The Corps shall ensure that all interested Native American reviewers shall receive copies of all final survey and evaluation reports.

XII. TRIBAL CONSULTATION AND TREATMENT OF HUMAN REMAINS

The Project will not be constructed on federally-owned property, therefore NAGPRA would not apply. WSAFCA and landowner shall ensure that Native American human remains and grave goods encountered during the Undertaking that are located on state or private land are treated in accordance with the requirements in California State Health and Safety Code, Section 7050.5 and Public Resources Code 5097.98. The HPMP will clearly explain means of identifying human remains and associated grave goods, notification procedures, and procedures for complying with state burial laws consistent with this Agreement. Any procedures described in the HPTP regarding the handling or treatment of human remains will be coordinated with the landowner to ensure that they are consistent with Public Resources Code 5097.98. In the event that any Native American human remains or associated funerary items are identified, the Most Likely Descendant (MLD), as identified by the Native American Heritage Commission, shall be invited to advise WSAFCA and landowner(s) in the treatment of any Native American human remains and items associated with Native American burials.

XIII. PUBLIC CONSULTATION AND PUBLIC NOTICE

- A.** Pursuant to 36 C.F.R. § 800.6(c)(2)-(3), the Corps will consider additional requests by interested parties to become Concurring Parties to this Agreement. Within 15 days of receiving such a request, the Corps will notify the SHPO and consult with the SHPO on the disposition of such requests. Should Corps and SHPO fail to come to agreement on such requests, Corps shall follow **Stipulation XV. Dispute Resolution**.
- B.** The interested public will be invited to provide input on the identification, evaluation, and proposed treatment of Historic Properties. This may be carried out through either letters of notification, public meetings, environmental assessment/environmental impact statements, and/or site visits. The Corps shall ensure that any comments received from members of the public are taken under consideration and incorporated where appropriate. Review periods shall be consistent with **Stipulation II (Timeframes and Review Procedures)**. In seeking input from the interested public, locations of Historic Properties will be handled in accordance with **Stipulation XIV (Confidentiality)**. In cases where the release of location information may cause harm to the Historic Property, this information will be withheld from the public in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).

XIV. CONFIDENTIALITY

Confidentiality regarding the nature and location of the archaeological sites and any other cultural resources discussed in this Agreement shall be limited to appropriate Corps personnel, WSAFCA personnel and its contractors, Native American tribes, the SHPO, and those parties involved in planning, reviewing and implementing this

Agreement to the extent allowed by Section 304 of the NHPA (54 U.S.C. § 307103) and the Freedom of Information Act (5 U.S.C. § 552).

XV. DISPUTE RESOLUTION

- A.** Should any Signatory Party to this Agreement object in writing to any action proposed or carried out pursuant to this Agreement, the Corps will immediately notify the SHPO and the Concurring Parties of the objection and proceed to consult with the objecting party for a period of time, not to exceed thirty (30) calendar days, to resolve the objection. If the objection is resolved through consultation, the Corps may authorize the disputed action to proceed in accordance with the terms of such resolution. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the ACHP. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP shall either:
- a. Advise the Corps that the ACHP concurs in the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or
 - b. Provide the Corps with recommendations, which the Corps shall consider in reaching a final decision regarding the objection; or
 - c. Notify the Corps that the ACHP will comment in accordance with the requirements of Section 106 of the NHPA, and proceed to comment. Any ACHP comment provided in response shall be considered by the Corps, pursuant to the requirements of Section 106 of the NHPA.
- B.** Should the ACHP not exercise one of the options under this stipulation) within forty-five (45) calendar days after receipt of all submitted pertinent documentation, the Corps' responsibilities under Section 106 of the NHPA are fulfilled upon implementation of the proposed response to the objection.
- C.** The Corps shall consider any ACHP recommendation or comment and any comments from the SHPO to this Agreement provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
- D.** The Corps shall provide the SHPO with a written copy of its final decision regarding any objection addressed pursuant to this stipulation.
- E.** At any time during implementation of the measures stipulated in this Agreement should an objection pertaining to the Agreement be raised by a Concurring Party, Native American Tribe, or a member of the public, the Corps shall notify the Signatory and Concurring Parties and take the objection under consideration, consulting with the objecting party and, should the objecting party request, any of the

Signatory and Concurring Parties to this Agreement, for no longer than fifteen (15) calendar days. The Corps shall consider the objection, and in reaching its decision, will consider all comments provided by the other parties. Within fifteen (15) calendar days following closure of the comment period, the Corps will render a decision regarding the objection and respond to the objecting party. The Corps will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. The Corps' decision regarding resolution of the objection will be final. Following issuance of its final decision, the Corps may authorize the action that was the subject of the dispute to proceed in accordance with the terms of that decision. The Corps' responsibility to carry out all other actions under this Agreement shall remain unchanged.

XVI. NOTICES

- A.** All notices, demands, requests, consents, approvals or communications from all parties to this Agreement to other parties to this Agreement shall be personally delivered, sent by United States Mail, or emailed, and all parties shall be considered in receipt of the materials five (5) calendar days after deposit in the United States mail, certified and postage prepaid, return receipt requested.
- B.** Signatory and Concurring Parties agree to accept facsimiles or copies of signed documents and agree to rely upon such facsimiles or copies as if they bore original signatures.

XVII. AMENDMENTS, NONCOMPLIANCE, AND TERMINATION

- A. Amendment:** Any Signatory Party to this Agreement may propose in writing to the other Signatories that the Agreement be amended, whereupon the Signatories shall consult for thirty (30) calendar days consider such amendment. The Agreement may be amended only upon written concurrence of all Signatories.

All attachments to this Agreement, and other instruments prepared pursuant to this agreement including, but not limited to, the Project's description, initial cultural resource inventory report and maps of the APE, the HPMP, HPTPs, and monitoring and discovery plans, may be individually revised or updated through consultation consistent with **Stipulation II (Timeframes and Review Procedures)** and agreement in writing of the Signatories without requiring amendment of this Agreement, unless the Signatories through such consultation decide otherwise. In accordance with **Stipulation XI (Tribal Involvement)** and **Stipulation XV (Public Consultation and Public Notice)**, the Concurring Parties, interested Native American Tribes, and interested members of the public, will receive amendments to the Project's description, initial cultural resource inventory report and maps of the APE, the HPMP, HPTPs, and monitoring and discovery plans, as appropriate, and copies of any amendment(s) to the Agreement.

B. Termination: Only the Signatories may terminate this Agreement. If this Agreement is not amended as provided for in **Stipulation XVII.A. (Amendment)**, or if any Signatory proposes termination of this Agreement for other reasons, the Signatory proposing termination shall notify the other Signatory in writing, explain the reasons for proposing termination, and consult with the other Signatory to seek alternatives to termination, within thirty (30) calendar days of the notification.

Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement.

Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatory and Concurring Parties in writing.

Beginning with the date of termination, the Corps shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.

C. Duration: This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this ten-year period unless it is terminated prior to that time. No later than ninety (90) calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

XVIII. ANNUAL REPORTING

Within thirty days after the close of every calendar year following the execution of this Agreement, WSAFCA shall provide all parties to this Agreement a summary report detailing work carried out pursuant to its terms, if any. Such report shall describe progress made implementing the terms of the Agreement as well as include any scheduling changes proposed, any problems encountered, and any disputes and objections received in WSAFCA and the Corps efforts to carry out the terms of this Agreement. The Corps shall arrange a meeting with the Signatories within 30 days after the submission of the annual report to discuss the on-going implementation of the PA.

XIX. EFFECTIVE DATE

This Agreement shall take effect on the date that it has been fully executed by WSAFCA, the Corps, and the SHPO.

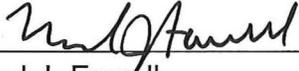
Southport Early Implementation Project Programmatic Agreement

EXECUTION of this Agreement by WSAFCA, the Corps and the SHPO, its transmittal to the ACHP, and subsequent implementation of its terms evidence that the Corps has afforded the ACHP an opportunity to comment on the undertaking and its effects on Historic Properties, that the Corps has taken into account the effects of the undertaking on Historic Properties, and that the Corps has satisfied its responsibilities under Section 106 of the NHPA and applicable implementing regulations for all aspects of the undertaking.

**PROGRAMMATIC AGREEMENT
AMONG THE
U.S. ARMY CORPS OF ENGINEERS, WEST SACRAMENTO AREA FLOOD
CONTROL AGENCY, AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, REGARDING THE
SOUTHPORT SACRAMENTO RIVER EARLY IMPLEMENTATION PROJECT,
YOLO COUNTY, CALIFORNIA**

SIGNATORY PARTIES:

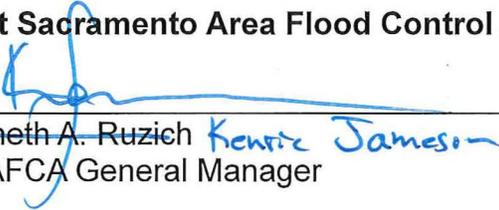
U.S. Army Corps of Engineers

By  Date 6 Nov 2015
Michael J. Farrell
Colonel, U.S. Army
District Commander

California State Office of Historic Preservation

By  Date 11/6/15
for Julianne Polanco
State Historic Preservation Officer

West Sacramento Area Flood Control Agency

By  Date 11/6/15
Kenneth A. Ruzich *Kentric Jameson*
WSAFCA General Manager

Southport Early Implementation Project Programmatic Agreement

PROGRAMMATIC AGREEMENT
AMONG THE
U.S. ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, REGARDING THE
WEST SACRAMENTO GENERAL REEVALUATION REPORT,
YOLO COUNTY and SOLANO COUNTIES, CALIFORNIA

CONCURRING PARTY

Yocha Dehe Wintun Nation

By _____ Date _____
Leland Kinter
Chairperson

Southport Early Implementation Project Programmatic Agreement

PROGRAMMATIC AGREEMENT
AMONG THE
U.S. ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, REGARDING THE
WEST SACRAMENTO GENERAL REEVALUATION REPORT,
YOLO COUNTY and SOLANO COUNTIES, CALIFORNIA

CONCURRING PARTY:

United Auburn Indian Community

By _____ Date _____
Gene Whitehouse
Chairperson

Southport Early Implementation Project Programmatic Agreement

PROGRAMMATIC AGREEMENT
AMONG THE
U.S. ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, REGARDING THE
WEST SACRAMENTO GENERAL REEVALUATION REPORT,
YOLO COUNTY and SOLANO COUNTIES, CALIFORNIA

CONCURRING PARTY:

Central Valley Flood Protection Board

By _____ Date _____
Leslie Gallagher
Executive Director

Attachment A

Southport Sacramento River Early Implementation Project: Description of the Project and U.S. Army Corps of Engineers Undertakings

A.1 Introduction

This attachment provides information to support the programmatic agreement prepared to guide management of cultural resources for the Southport Sacramento River Early Implementation Project (EIP). Relevant sections include a detailed description of the proposed project and associated actions that require compliance with Section 106 of the National Historic Preservation Act (NHPA).

A.2 Project Description

The West Sacramento Area Flood Control Agency (WSAFCA) is undertaking the Southport Sacramento River Early Implementation Project (“Southport project,” or simply “project”) to construct flood risk–reduction measures along the Sacramento River South Levee in the city of West Sacramento, Yolo County, California. The primary purpose of the Southport project is to provide flood risk management for the entire city of West Sacramento. Secondary purposes of the Southport project are to provide ecosystem restoration and public recreation opportunities that are compatible with flood risk–reduction measures. The location of the project in relation to the surrounding region, and project areas where construction or borrow material excavation would occur, are depicted in Figures 1 and 2. Flood risk-reduction measures proposed for construction are depicted in Figure 2a.

The proposed project is a blend of flood risk–reduction measures that are based on their effectiveness in addressing deficiencies, compatibility with land uses, minimization of real estate acquisition, avoidance of adverse effects, and cost.

The overall project involves the following elements.

- Construction of flood risk–reduction measures, including seepage berms, slurry cutoff walls, setback levees, rock and biotechnical slope protection, and encroachment removal.
- Partial degrade of the existing levee, forming a “remnant levee”.
- Construction of offset areas using setback levees.
- Construction of breaches in the remnant levee to open up the offset areas to Sacramento River flows.
- Offset area restoration.
- Road construction.
- Drainage system modifications.

The proposed project includes a combination of setback levees, cutoff walls, and seepage berms (along with other measures) (Table 1).

Table 1. Flood Risk-Reduction Measures by Segment

Segment	Length (Feet)	Flood Risk-Reduction Measures
A	4429	Slurry cutoff wall
B	5711	Slurry cutoff wall Slurry cutoff wall and landside seepage berm Setback levee, slurry cutoff wall, and landside seepage berm
C	5430	Setback levee, slurry cutoff wall, and landside seepage berm Setback levee and slurry cutoff wall
D	1986	Setback levee and slurry cutoff wall
E	3292	Setback levee and slurry cutoff wall Setback levee, slurry cutoff wall, and landside seepage berm
F	5491	Setback levee, slurry cutoff wall, and landside seepage berm
G	2137	Slurry cutoff wall
¹ Total length of the Federal levee would be reduced to approximately 5.6 miles from its present length of 5.8 miles due to the landward alignment of the proposed setback levee		

Construction of the project would occur in more than one annual construction season, with construction of flood risk–reduction measures beginning in April of 2016, and likely finishing in 2018. Construction and restoration of the offset area would likely continue after 2018, with final remnant levee breaches constructed in 2020. Village Parkway construction and utility relocations would begin in fall of 2015. A description of expected construction activities by construction year is provided below.

Year 1

- Village Parkway construction and utility relocation would be completed.
- The entire length of the setback levee would be started in Year 1, beginning with the foundation and working platform. Construction of the cutoff wall would follow if weather allows.

Year 2

- The setback levee cutoff wall and remaining buildup of the setback levee would be constructed to a finished elevation of +40 feet NAVD 88.
- South River Road detour at south end of Segment A.
- Seepage berms would be constructed following completion of the setback levees.
- Segment A and the southern portion of Segment B would be degraded to an elevation of +31 feet NAVD 88, and in Segment G the levee would be degraded to an elevation of +34.5 feet NAVD 88. Cutoff walls would then be constructed in these segments, tying into the setback levee cutoff walls in Segments B and F. The levee crown in Segment A and the southern portion of Segment B would then be built back up to a finished elevation of +39 feet NAVD 88, and the levee in Segment G would be built back up to a finished elevation of +40 feet NAVD 88. The slurry cutoff wall toe would be at an elevation of -5 feet NAVD 88 through Segments A, B, C, and D; at 0 feet

NAVD 88 for Segments E, F, and the southern portion of G; and would be at -67 feet NAVD 88 for the remainder of Segment G.

- The remnant levee in Segments B, C, D, and F would be degraded to an elevation of +30 feet NAVD 88, and would have a 20-foot-wide crown.
- Offset area grading would begin.
- Erosion site repairs at C1, C2, and G3 would be constructed late in the construction season once the remnant levee has been degraded.

Year 3

- Offset area grading would be completed, with the exception of the cellular berms.
- Breaches N1 and S3 would be constructed. Culverts would be installed through the remnant levee at the other breach locations to allow water to flow into, and drain out of, the offset areas during the interim condition.
- Offset area planting would begin and would continue through Year 6.

Year 4

- Offset area planting would continue.

Year 5

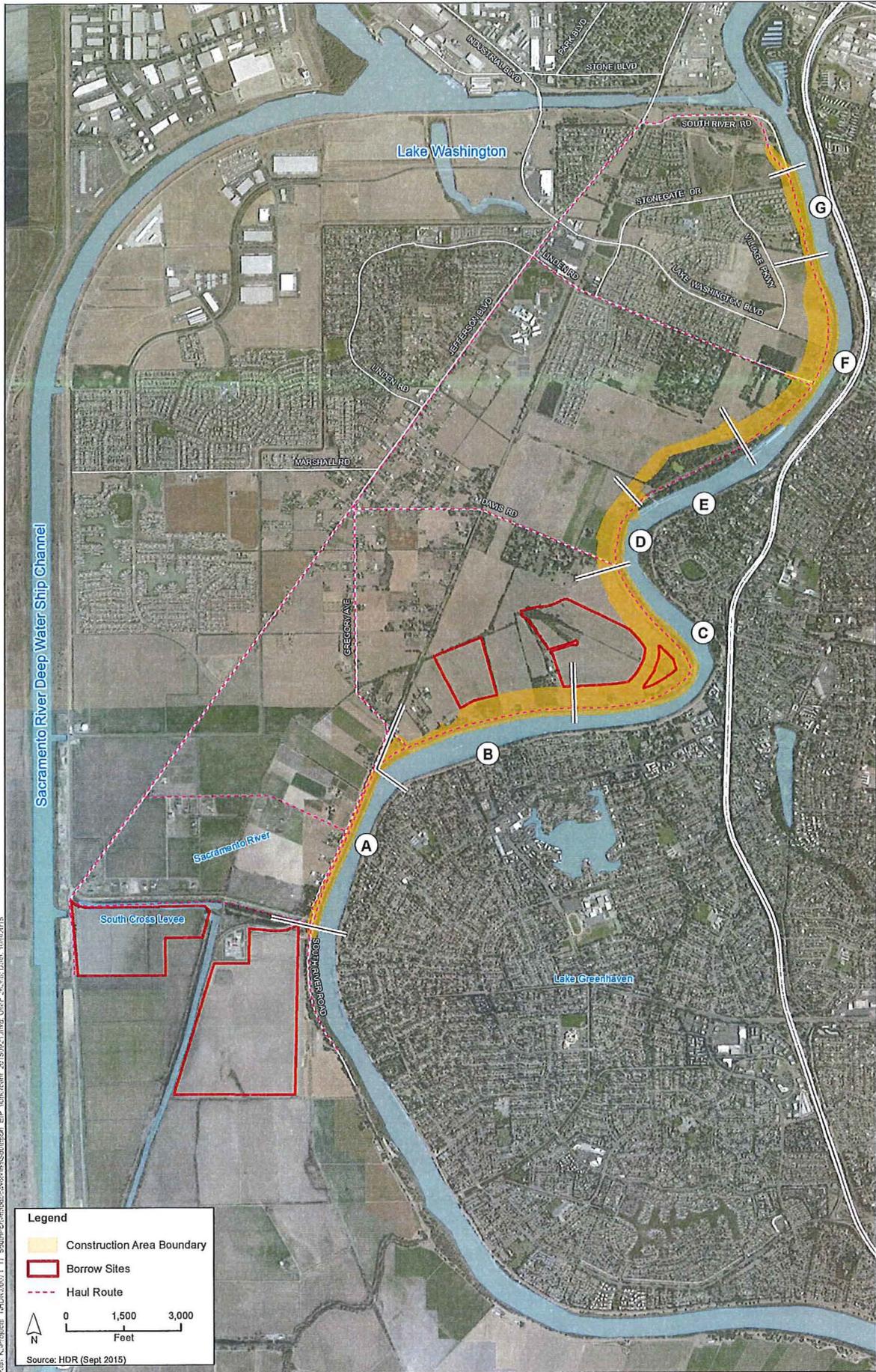
- The three remaining breaches and the offset area cellular berms would be constructed, and the southern offset area would be contoured.

Year 6

- Offset area planting would be completed.

A.3 National Historic Preservation Act, Section 106 Undertakings

The project requires permits and authorizations from the U.S. Army Corps of Engineers under Section 14 of the Rivers and Harbors Act (33 U.S. Code [USC] Section 408), Section 404 of the Clean Water Act (33 USC Section 1344), and Section 10 of the Rivers and Harbors Act (33 USC Section 403). Because activities authorized under these permits and approvals may affect historic properties, compliance with Section 106 of the National Historic Preservation Act (NHPA, 16 USC Section 470f) is required. The programmatic agreement, attached research design, and *Historic Property Treatment Plan* (“Plan,” Attachment B), provide a means of phasing completion of Section 106 management steps for these undertakings.



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Figure 2
Area of Potential Effects



Attachment B
(To be appended)

Attachment C

Property Types Exempt from Evaluation

This attachment defines categories of properties that do not warrant evaluation pursuant to Stipulation IV.B of this Agreement. Only individuals meeting the Secretary of the Interior's Professional Qualification Standards pursuant to Stipulation VII.A of this agreement are authorized to determine whether properties meet the requirements of this attachment and are therefore exempt from evaluation and consultation with SHPO. Exempted properties may be documented, if documentation is warranted, at a level commensurate with the nature of the property (e.g., DPR 523 Primary Form, Location Map, memo). The Corps Cultural Resources staff shall make any final determinations on level of documentation required under this agreement.

Exempt Property Type 1: Archaeological Property Types and Features

1. Isolated prehistoric finds consisting of fewer than three items per 100 m²
2. Isolated historic finds consisting of fewer than three artifacts per 100 m² (several fragments from a single glass bottle, and similar vessels are to be counted as one artifact)
3. Refuse scatters less than 50 years old (scatters containing no material that can be dated with certainty as older than 50 years old)
4. Features less than 50 years old (those known to be less than 50 years old through map research, inscribed dates, etc.)
5. Isolated refuse dumps and scatters over 50 years old that lack specific associations
6. Isolated mining prospect pits
7. Placer mining features with no associated structural remains or archaeological deposits
8. Foundations and mapped locations of buildings or structures more than 50 years old with few or no associated artifacts or ecofacts, and with no potential for subsurface archaeological deposits

Exempt Property Type 2: Minor, Ubiquitous, or Fragmentary Infrastructure Elements

The following list does not apply to properties 50 years old or older that could be potentially important, nor does it apply to properties that may contribute to the significance of larger historic properties such as districts or cultural landscapes.

Water Conveyance and Control Features

- Natural bodies of water providing a water source, conveyance, or drainage
- Modified natural waterways

- Concrete-lined canals less than 50 years old and fragments of abandoned canals
- Roadside drainage ditches and secondary agricultural ditches
- Small drainage tunnels
- Flood storage basins
- Reservoirs and artificial ponds
- Levees and weirs
- Gates, valves, pumps, and other flow control devices
- Pipelines and associated control devices
- Water supply and waste disposal systems
- Rip-rap

Recent Transportation or Pedestrian Facilities

- Railroad grades converted to other uses, such as roads, levees, or bike paths
- Bus shelters and benches
- Vista points and rest stops
- Bike paths, off-road vehicle trails, equestrian trails, and hiking trails
- Parking lots and driveways

Highway and Roadside Features

- Isolated segments of bypassed or abandoned roads
- Retaining walls
- Highway fencing, soundwalls, guard rails, and barriers
- Drains and culverts, excluding culverts assigned a Caltrans bridge number
- Cattle crossing guards
- Roadside landscaping and associated irrigation systems
- Signs and reflectors
- Telecommunications services, including towers, poles, dishes, antennas, boxes, lines, cables, transformers, and transmission facilities
- Utility services, including towers, poles, boxes, pipes, lines, cables, and transformers
- Oil and gas pipelines and associated control devices

Adjacent Features

- Fences, walls, gates, and gateposts

- Isolated rock walls and stone fences
- Telephone booths, call boxes, mailboxes, and newspaper receptacles
- Fire hydrants and alarms
- Markers, monuments, signs, and billboards
- Fragments of bypassed or demolished bridges
- Temporary roadside structures, such as seasonal vendors' stands
- Pastures, fields, crops, and orchards
- Corrals, animal pens, and dog runs
- Open space, including parks and recreational facilities
- Building and structure ruins and foundations less than 50 years old

Movable or Minor Objects

- Movable vehicles
- Stationary vehicles less than 50 years old or moved within the last 50 years
- Agricultural, industrial and commercial equipment and machinery
- Sculpture, statuary, and decorative elements less than 50 years old or moved within the last 50 years