

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION  
FOR SECTION 408 PERMISSIONS WITHIN THE BOUNDARIES  
OF THE SACRAMENTO DISTRICT OF THE CORPS IN THE STATE OF CALIFORNIA**

**WHEREAS**, the Sacramento District of the U.S. Army Corps of Engineers (Corps) proposes to implement the Section 408 Permissions Program for all Federally authorized civil works projects located in the Sacramento District boundaries within the state of California, as described and illustrated in Appendix A of this Agreement; and

**WHEREAS**, the Corps' authority to grant permission for temporary or permanent alterations to Federally authorized civil works projects is contained in Section 14 of the Rivers and Harbors Act of 1899, codified at 33 U.S. Code § 408, titled Taking possession of, use of, or injury to harbor or river improvements; and

**WHEREAS**, the Corps has developed specific guidance implementing 33 U.S. Code § 408 (Section 408) in an Engineering Circular (EC), entitled Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineering Civil Works Projects Pursuant to 33 USC 408 (EC 1165-2-220); and

**WHEREAS**, the Corps has determined in accordance with EC 1165-2-220, that a Section 408 Permission is a federal action and an alteration to existing civil works projects may constitute an Undertaking [as defined by 54 U.S.C. § 300320 and 36 CFR § 800.16(y)], and are therefore subject to Section 106 of the National Historic Preservation Act (Section 106), and its implementing regulations at 36 CFR 800; and

**WHEREAS**, the Regulatory Program (Regulatory) of the Corps administers and enforces Section 10 of the Rivers and Harbors Act of 1899 (RHA) and Section 404 of the Clean Water Act (CWA), and does not administer or enforce 33 U.S. Code § 408; and

**WHEREAS**, the Corps has consulted with the California State Historic Preservation Officer (SHPO) and has determined these Section 408 permission request Undertakings may affect properties listed in or eligible for listing in the National Register of Historic Places (NRHP) pursuant to 36 CFR Part 60 (historic properties); and

**WHEREAS**, the SHPO has participated in the development of this Programmatic Agreement (Agreement), to provide a streamlined process to conduct mandated Section 106 reviews of Section 408 permission requests. This Agreement does not apply to the construction of new civil works projects. Appendix A of this Agreement describes typical Section 408 permission requests and the existing civil works projects which create the need for the permission requests, and that this Agreement will apply to; and

**WHEREAS**, The Corps has invited 79 Native American tribes identified with potential interest in 408 permissions within the portion of the Sacramento District boundaries that fall in the state of California to be a concurring parties to this document. At the close of the 30 day invitation period, only the Tuolumne Me-Wuk, Tejon, and United Auburn Indian Community accepted the invitation. In light of the importance of the Agreement, the Corps will distribute a draft of the document to the same 79 tribes for comments. The Corps recognizes that these tribes may have sites of religious and cultural significance on or off Tribal Lands [as defined in 36 CFR § 800.16(x)] that may be affected by these undertakings, and in meeting its Federal trust responsibility, the Corps has engaged government-to-government consultation with federally recognized Native American Tribe(s) (Indian Tribes) to develop this Agreement, and consultation will continue through implementation of the terms below; and

**WHEREAS**, Various Indian Tribes have assumed the responsibilities of SHPO in its/their Tribal lands through appointment of a Tribal Historic Preservation Officer (THPO) in accordance with Section 101 of NHPA, and the Corps shall consult with THPO in lieu of SHPO for Undertakings occurring on or affecting its/their Tribal lands; and

**WHEREAS**, This Agreement is not applicable on Tribal lands; and

**WHEREAS**, additional Native American Tribes that have not been recognized by the federal government may have sites of religious and cultural significance in the Corps' Sacramento District Boundaries, hereafter referred to as non-federally recognized Tribes (NFRT); and

**WHEREAS**, The Corps has invited NFRTs to concur in the terms of this Agreement as concurring parties in accordance with 36 CFR § 800.14(f), and nothing in this Agreement prevents a Tribe from entering into a separate Programmatic Agreement (Agreement) or other agreement for administration of Corps Programs; and

**WHEREAS**, the Corps has consulted with Indian Tribes, NFRTs, other organizations, and individuals (see Attachment), interested members of the public, and historical societies and organizations (see Attachment); and

**WHEREAS**, for the review of specific Undertakings under this Agreement, the Corps may invite other agencies, organizations, and individuals to participate as consulting parties; and

**WHEREAS**, the Corps has notified the Advisory Council on Historic Preservation (ACHP) that an Agreement will be prepared, pursuant to 36 CFR §800.6(a)(1)(ii), inviting their participation, and in a letter dated September 7, 2017 the ACHP has chosen to participate in the consultation; and

**WHEREAS**, the Corps has developed this Agreement in consultation with the SHPO, ACHP, Indian Tribes, and other consulting parties in accordance with 36 CFR 800.14(b)(2); and

**NOW, THEREFORE**, the Corps, ACHP, and the SHPO (Signatories) agree that that Section 408 Permissions Undertakings within the boundaries of the Sacramento District of the U.S. Army Corps of Engineers within the State of California shall be implemented in accordance with the following stipulations in order to take into account their effects on historic properties.

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

## **STIPULATIONS**

### **I. APPLICABILITY**

- A. This Agreement applies to Undertakings in the Sacramento District of the U.S. Army Corps of Engineers solely in California resulting from the Corps' authority under Section 14 of the Rivers and Harbors Act of 1899, codified at 33 U.S. Code § 408 and no other authorities. The granting or denial of permission pursuant to Section 408 is not a permit action handled by the Regulatory Program. Moreover, if a proposed alteration also requires authorization pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and/or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (Section 10/404/103), district Regulatory and Section 408 personnel will coordinate throughout their respective evaluations. Through coordination, whichever permitting action (404/408) has the larger jurisdictional area will take the lead on required consultations. Should the Regulatory Program take the lead, this Agreement will not apply to the proposed Undertaking. Should the 408 Program take the lead, this Agreement will apply to the entire Undertaking, as defined at 36 CFR 800.16(y).
- B. For any Undertaking that another Federal Agency has completed or is conducting Section 106 review for, the Sacramento District Corps may rely on those studies, surveys, and other information and consultation efforts completed by the other Agency to inform its own Section 106 review for the Section 408 Permission Undertaking when the entire 408 Permissions area of potential effects APE is covered. Where the Sacramento District determines that the other Agency's efforts satisfy its Section 106 responsibility for the Section 408 Permission Undertaking, they may choose to use the previously completed efforts to evidence their own compliance with Section 106 under this Agreement. Should the Corps determine that the other Agency's efforts do not meet the requirements of this Agreement, the Corps will complete their own studies, surveys and consultation efforts for the Undertaking pursuant to Stipulation VI of this Agreement.
- C. If another non-Corps of Engineers Federal program or Federal agency has concluded Section 106 consultation review and approved the same Undertaking

within the past five (5)-years that requires 408 permissions, and no new substantial information (e.g. a new historic property discovery, a significant change in effect from the previously reviewed undertaking, etc.) has been uncovered, and the APE has not changed, the Corps is not required to complete further Section 106 review for its 408 permission regarding that Undertaking provided that the Corps:

1. Determines that the previous agency complied with Section 106, including Tribal consultation, appropriately and;
  2. Adopts the findings and determinations of the previous agency; and
  3. Documents these findings in its project file in order to confirm that the requirements of Section 106 have been satisfied; or
  4. Conducts additional Section 106 consultation in accordance with the terms of this Agreement should the Corps, in consultation with the SHPO and Indian Tribes and NFRTs with an interest in that area, determine that the previous Section 106 review was insufficient or involved interagency disagreements about eligibility, effect, and/or Treatment Measures.
- D. The Corps may adopt the Section 106 review undertaken by another federal agency under a programmatic agreement to which the Corps is not a party to, so long as the agency review was undertaken for the specific project that is the subject of the 408 permission.

## **II. ROLES AND RESPONSIBILITIES**

- A. The Corps shall be responsible for ensuring compliance with Section 106 of the NHPA, providing oversight of this Agreement, coordinating the roles of other Signatories and Consulting Parties, participating in the resolution of objections among the consulting parties, and providing technical assistance and guidance to parties requesting 408 Permissions (Requesters).
- B. Prior to authorizing individual Undertakings, the Corps shall inform Requester(s) of all stipulations and conditions and ensure that they are understood so they can be adequately conveyed to other parties. For any Section 408 permission, the Requester is responsible for the actions of his contractors, subcontractors and agents. The Corps shall provide Requester(s) with guidance on in-kind repair pursuant to The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 (Standards), 36 CFR Part 68, or the most updated version, and techniques to avoid or minimize adverse effects to historic properties. Specifically the Corps shall require that Requester(s):
  1. Understand and acknowledge conditions and potential requirements that may be placed upon Undertakings as a result of Section 106 consultation and the provisions of this Agreement.

2. Understand that failure to comply with any project-specific conditions that have been placed on their permission requests could jeopardize the Corps approvals.
3. Notify the Corps as soon as possible of any proposed change to the approved scope of work. Requester(s) shall not implement the changes to the proposed scope of work until any additional review required by this Agreement is complete.
4. Ensure compliance with Stipulation XII, Post-Review Discoveries, in the event of a discovery where an Undertaking has affected a previously unidentified historic property or human remains, or affected a known historic property in an unanticipated manner.
5. Ensure that for any scope of work involving ground disturbance, the resultant contracts to execute said work provides for the protection of and notification protocols for post-review discoveries or unanticipated effects to historic properties and/or human remains.

### **III. STANDARDS AND QUALIFICATIONS**

- A. All actions prescribed by this Agreement shall be carried out by or under the direct supervision of a person or persons who meet the Secretary of the Interior's Professional Qualification Standards (SOIPQS) for archaeology, history, or architectural history, as appropriate, as set forth in the Federal Register at 48 Fed. Reg. 44716-01 (September 29, 1983), and as proposed for revision in 1997 (FR 97-16168). Only Federal staff meeting the SOIPQS (Corps Qualified Staff) may apply the Programmatic Allowances (Allowances) listed in Appendix B, define APEs, oversee identification and evaluation of all historic properties, make determinations of eligibility, and make findings of effects. Corps Qualified Staff meeting the SOIPQS in the appropriate discipline shall review any National Register eligibility determination and findings of effect resulting from the performance of these activities prior to submitting such determinations to SHPO, Indian Tribes, and NFRTs (Collectively, Tribes) for review.
- B. The Corps acknowledges that Tribes possess special expertise in assessing the National Register eligibility of properties with religious and cultural significance to them.
- C. For all Undertakings under this Agreement, the Corps shall conduct all Section 106 consultation with Indian Tribe(s). The Corps may authorize Requester(s), and/or their agents, to assist in identifying other consulting parties with a demonstrated interest in the Undertaking, and prepare any necessary analyses and documentation. The Corps shall follow the process set forth in Stipulation II.B, Roles and Responsibilities. The Corps remains legally responsible for all findings, determinations, and government-to-government relationships with the Indian Tribes.

- D. The Corps shall ensure that all documentation resulting from Undertakings reviewed pursuant to this Agreement is consistent with applicable SHPO guidelines and the confidentiality provisions of 54 U.S.C. § 307103 and 36 CFR § 800.11(c) and any other applicable regulations.
- E. Corps shall ensure that the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001-3013, 18 U.S.C. § 1170) and the Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. §470aa – 470mm) are followed on Federal lands.

#### **IV. TIMEFRAMES AND COMMUNICATIONS**

- A. All time designations shall be in calendar days unless otherwise stipulated. If a review period included in this Agreement concludes on a Saturday, Sunday, State, or Federal holiday, the review period will be extended until the next business day. Documents for review may be sent electronically to Signatories or Concurring Parties that have agreed to accept electronic communications pursuant to this Agreement. Any electronic communication forwarding or other documents for review under the terms of this Agreement that is sent after 4:00 pm Pacific Time will be deemed to have been received by the reviewing party on the next business day. Email comments by the Signatories on any documents submitted for review under this Agreement are timely if they are received at any time on or before the last day of a review period. Responses sent by mail will be accepted as timely if they are postmarked by the last day allowed for the review. If any Signatory does not object to or comment on the Corps finding or determination related to an Undertaking within an agreed upon timeframe, the Corps may proceed to the next step in the consultation process as described in Stipulation II, Project Review.
- B. For emergency Undertakings as reviewed under Stipulation VII.C, pursuant to 36 CFR 800.12(b)(1), the Corps shall provide notification to the SHPO and Tribe(s) of the emergency, and provide documentation of any efforts to identify historic properties that may be affected by the Undertaking. SHPO and Tribe(s) shall have seven (7) days after receipt to respond to any Corps request for comments, unless the Corps determines the nature of the emergency action warrants a shorter time period. Any disagreements or objections will be resolved in accordance with Stipulation XIV, Dispute Resolution.
- C. For Undertakings associated with all other permissions, following the Project Review provisions (Stipulation VI) of this agreement, the comment period for each request for concurrence shall be a maximum of thirty (30)-days from the date of receipt, unless otherwise agreed to by the Corps on a case-by-case basis.
  - 1. The consulting parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this Agreement by email.

2. If the size of an email message is unusually large or an email is returned to a sender because its size prevents delivery, the sender will contact the Requester(s) and determine alternative methods to deliver the information.

## **V. AREA OF POTENTIAL EFFECTS**

The APE for each Undertaking under this Agreement shall include the geographic area or areas within which the Undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of undertakings. The APE will, at a minimum, include the direct footprint of the proposed activity and a reasonable buffer determined by Corps Qualified Staff according to the nature of the activity, land ownership interest for easement, and all ground-disturbing work that may extend beyond the footprint of planned improvements and activities.

### **A. Revisions to the APE:**

For the purposes of this Agreement, if any changes to a proposed Undertaking should occur, a revised APE shall be defined, including but not limited to, the following criteria:

1. The extent of all proposed construction and excavation activity required under the Permission, and
2. The additional right-of-way/easements obtained as part of the Undertaking features, and
3. All areas used for excavation of borrow material, landscaping, and/or habitat creation, and
4. All construction staging areas, access routes, spoil areas, and stockpiling areas.
5. All visual, vibratory, auditory, and other effects to historic properties

## **VI. PROJECT REVIEW**

### **A. Identification and Evaluation:**

For all undertakings, the Corps shall ensure that the following identification steps are implemented, following the process as written in 36 CFR § 800.3-800.4.

### **B. Level of Effort:**

The Corps shall make a reasonable and good faith effort to identify historic properties in accordance with 36 CFR § 800.4(b)(1). This will include the following steps:

1. The Corps will initiate consultation with interested Tribes identified by the Native American Heritage Commission (NAHC) to request any information concerning areas of Tribal concern or potential historic properties and comments on the delineation of the APE. The Tribes will be asked to share information and comments in accordance with Stipulation IV. Once the Corps has received information and comments, a consultation package will be mailed to the SHPO and Tribes presenting delineation of the APE and project effects with a request for a thirty (30) day review, except for Undertakings that are exempt from SHPO review under Appendix B (Pursuant to Stipulation VIII). In the event that additional comments and/or revisions are requested during this consultation period, the Corps will resubmit the consultation packages and request a fifteen (15) day back check review.
2. The Corps will acquire a current and complete records and literature search from the appropriate California Historical Resources Information System Information Center(s) and a Sacred Lands File (SLF) Search from the Native American Heritage Commission, prior to conducting archaeological surveys of the APE. Records searches, SLF searches and literature searches will be considered complete and current for a period of five years after they are conducted unless, in the professional opinion of Corps Qualified Staff, more frequent updates are required.
3. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR § 800.11. Documentation not prepared by Corps personnel but by local or state agencies in support of such findings shall be submitted to the Corps for review and approval by Corps Qualified Staff.
4. The Corps will complete and report the results of all required potential Historic Properties inventories 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 take into account the National Park Service's publication, "The Archeological Survey: Methods and Uses" (1978: GPO stock #024-016-00091). Inventories will include archeological surveys and inventories of historic buildings, structures, districts, and landscapes. Surveys will include areas not previously surveyed and those where the Corps Qualified Staff deems previous surveys to be inadequate, e.g. areas with changes in landscape due to fire, erosion, flooding episodes which may have exposed previously unknown potential Historic Properties. The Corps will also include additional areas that may be affected by changes in the project design, borrow areas, haul roads, staging areas, extra work space, mitigation sites, and other ancillary areas related to the Undertaking. If identified potential Historic Properties can be evaluated for the NRHP based on the results of survey, context statements, and historic documentation, then the Corps may request SHPO concurrence with those eligibility determinations without further study.
5. The Corps will include in its site recordation documents all unrecorded archeological sites, linear features, and isolates encountered in the course of



the survey. The Corps will prepare updated DPR 523 forms of previously recorded sites if there has not been an update in the past 5 years. The Corps' survey will record all prehistoric sites and all historical sites, structures, buildings, and engineering features greater than forty-five (45) years of age. Historic sites to be recorded will include, but not be limited to: commercial, residential, and ecclesiastical buildings, roads, trails, railways, bridges, levees, culverts, and agricultural features, including ditches. The Corps shall ensure that the records resulting from the activities identified and/or collected are curated in accordance with 36 CFR Part 79, except as required by state law and regulations applicable to other agencies. Curation standards are further outlined below in Stipulation XIII, Cultural Material Treatment and Curation

6. The Corps will use the California Department of Parks and Recreation (DPR) Form 523 to record all newly discovered historic or prehistoric archeological sites and isolates, previously recorded archeological sites, and where necessary, will create updated site records using the DPR 523 Form. Isolates will be numbered sequentially, plotted on a map, and recorded on a single table within the report. The Corps will examine non-linear sites that extend outside of the APE in their entirety unless access to land is prohibited or the scale of the resource makes doing so prohibitive. In the event access cannot be gained, the Corps will consult with SHPO regarding appropriate means of evaluating a given site.

C. National Historic Landmarks:

When the Corps identifies an Undertaking with the potential to affect an NHL, the Corps will follow the procedure set forth at 36 CFR § 800.10, Special Requirements for Protecting NHL's.

D. Evaluation:

When the Corps identifies properties that are 45 years of age or older that are within the APE and may be affected by an Undertaking, the Corps shall evaluate those properties for their eligibility for listing on the National Register of Historic Places (NRHP), and will ensure that determinations of eligibility are made for these properties, except when exempt from evaluation pursuant to Stipulation VI.E below. Potential historic properties will be evaluated by a qualified professional, per Stipulation III(A), consistent with the Secretary of the Interior's Standards for Evaluation, 36 C.F.R. § 60.4. The Corps, in consultation with the SHPO and concurring parties, as appropriate, will determine whether this evaluation process requires subsurface testing or another method of evaluation.

E. Property Types Exempt from Evaluation:

Corps Qualified Staff may determine that a property does not warrant full evaluation if they can sufficiently demonstrate that the property will not be adversely affected by the proposed Undertaking. In these situations, the Corps will treat the property as eligible for listing on the NRHP only for the purposes of the relevant Undertaking.

The Signatories agree that the following properties will be exempt from evaluation:

1. Levees, canals, channels, or other flood control structures that will not be adversely affected by the proposed Undertaking.
2. Buildings or structures that are over 45 years of age that are at least 50 feet from the proposed actions of the Undertaking and that will not be adversely affected by the Undertaking.
3. Archaeological properties that are at least 100 feet from any proposed ground-disturbing activities proposed by the Undertaking, or that will be protected from adverse effects through protection measures agreed to by the Signatories.

## **VII. REVIEW OF IDENTIFICATION, EVALUATION AND FINDING OF EFFECT**

### **A. Internal Review:**

The Corps shall complete Section 106 review process internally, without SHPO review or notification for Undertakings meeting the following criteria:

1. If the Corps determines that an undertaking meets one or more of the Allowance classifications defined in Appendix B of this Agreement; and
2. No properties that are or that may be eligible for listing on the NRHP were identified within the APE pursuant to Stipulation VI, or have the potential to be affected by the proposed Undertaking; or
3. The only property or properties that are or may be eligible for listing on the NRHP within the APE are properties exempt from evaluation pursuant to Stipulation VI.E, and will not be adversely affected by the proposed Undertaking.

All determinations to complete Section 106 review internally will be documented in a Memorandum for Record and will be included in the Annual Report Pursuant to Stipulation XVII.

### **B. SHPO Review:**

If the Corps determines that an undertaking does not meet the Criteria for Internal Review pursuant to Stipulation VII. A, and/or if Corps Qualified Staff determines that cultural resources are present within the APE and may be affected by the undertaking, the Corps shall submit the following documentation to the SHPO for review and comment pursuant to the timeframes provided in Stipulation IV.D.

1. Identification and evaluation: documentation of the Corps' efforts to identify historic properties and evaluate properties within the APE, pursuant to Stipulation VI(A).

2. Determination of eligibility: documentation of the Corps' determination of eligibility for all resources identified within the APE, prepared pursuant to Stipulation VI.D or VI.E.
- C. Finding of effect: documentation pursuant to 36 CFR 800.4(d) through 36 CFR 800.5(d), including:
1. Basis of finding of no historic properties affected, pursuant to 36 CFR 800.4(d)(1); or
  2. Basis of finding of historic properties affected pursuant to 36 CFR 800.4(d)(2) and documentation of the application of the criteria of adverse effect pursuant to 36 CFR 800.5(a); or
  3. Basis of finding of no adverse effect, pursuant to 36 CFR 800.5(b), detailing the application of the criteria of adverse effect, taking into account the views of the consulting parties and the public concerning effects; or
  4. The Corps shall notify all consulting parties of its finding of no adverse effect; describing any project specific conditions and/or modifications and future submissions; and provide supporting documentation pursuant to 36 CFR §800.11(e); or
  5. Basis of finding of adverse effect: pursuant to 36 CFR 800.5(d)(2), the Corps shall assess effects by applying the criteria of adverse effect to all historic properties identified within the APE(s), taking into account the views of the consulting parties and the public concerning effects in accordance with 36 CFR § 800.5(a).
    - i. If the Corps, in consultation with the SHPO, Tribes(s), and any other consulting parties, determines that an Undertaking will have an adverse effect on historic properties, they shall continue consultation pursuant to Stipulation IX.E, Resolution of Adverse Effects.
- D. If the SHPO objects to a finding of “no adverse effect,” the Corps will consult with the SHPO to resolve the disagreement pursuant to Stipulation XIV, Dispute Resolution.
- E. Review of Emergency Undertakings: In the event of an emergency Undertaking, whereby the Undertaking is in response to immediate threats to life and property, the Corps will follow the guidelines provided for under 36 CFR § 800.12 emergency situations. Pursuant to 36 CFR Part 800.12, the Corps will notify the ACHP, the SHPO, and interested Tribes and give them 7 days to comment. In the event that the Undertaking situation does not allow for 7 days, the Corps will notify ACHP, the SHPO, and interested Tribes and provide them whatever time is available.

## VIII. PROGRAMMATIC ALLOWANCES

The Corps may determine that an Undertaking meets one or more of the Allowance classifications described in Appendix B and is, therefore, an Allowance Undertaking. The Allowance classifications described in Appendix B have been determined through consultation with signatories to this Agreement and Tribes. The Undertakings classified in Appendix B as Allowance Undertakings will require no further review under this Agreement when the requirements of Appendix B have been satisfactorily completed.

- A. If the Corps determines an Undertaking conforms to one or more Allowances in Appendix B of this Agreement, the Corps shall complete the Section 106 review process by documenting this determination in the project file, without SHPO or tribal review or notification. The SHPO will receive an annual report of the Allowance Undertakings accomplished each year, pursuant to Stipulation XVII.
- B. If the Corps determines any portion of an Undertaking's scope of work does not conform to one or more Allowances listed in Appendix B, the Corps shall conduct Section 106 review for the entire Undertaking in accordance with Stipulation VII.B, SHPO Review.
- C. Allowances may be revised and new Allowances may be added to this Agreement in accordance with Stipulation XVI.A, Amendments.

## **IX. AVOIDANCE, MINIMIZATION AND RESOLUTION OF ADVERSE EFFECTS**

### **A. Avoidance and Minimization of Adverse Effects:**

1. The Corps shall notify the SHPO, Tribe(s), and all other consulting parties, of its finding of no adverse effects describing any project specific conditions and future submissions; and provide supporting documentation pursuant to 36 CFR § 800.11(e). Unless a consulting party makes a timely objection in 30 days as outlined in Stipulation IV, Timeframes and Communications, the Corps shall proceed with its "no adverse effect" determination, including any conditions, and conclude the Section 106 review.
2. If an Undertaking is not modified to avoid the adverse effect(s), the Corps shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation IX.B, Resolution of Adverse Effects, below.

### **B. Resolution of Adverse Effects:**

1. If the Corps determines that an Undertaking would adversely affect a historic property or properties, it shall resolve the effects of the Undertaking in consultation with the SHPO; Requester(s); Tribe(s); ACHP; and other consulting parties, through the process provided in 36 CFR 800.6(b).
2. When the Corps determines an Undertaking will adversely affect an NHL, the Corps shall notify and invite the Secretary of the Interior, as well as notifying Regional National Park Service staff to participate in consultation in accordance with 36 CFR § 800.10.

## **X. GEOTECHNICAL INVESTIGATIONS**

For the purposes of gathering engineering data and for project planning, it may be necessary for a Requester to conduct limited geotechnical investigations at locations where a proposed action requiring 408 permission may take place before a full inventory and evaluation of historic properties is completed for the proposed action and before the undertaking is defined.

- A. The Requester may conduct geotechnical investigations (e.g., soil borings, cone penetration tests (CPT's), or trenches) for project planning and exploratory efforts within or adjacent to existing flood control infrastructure (e.g., levees, canals, or channels) if the proposed investigation would not result in adverse effects to the existing flood control infrastructure. The Corps shall follow Stipulation X.A(1) and (2), or may follow Stipulation X.A(3) if unable to follow Stipulation X.A(1) and (2) due to reasonable schedule constraints. The Corps may allow the Requestor to proceed with geotechnical investigations if:
1. A records and literature search and consultation with Native Americans has been conducted and it has been determined that there are no known potential historic properties located within 50 feet of the areas identified for geotechnical investigations (with the exception of the flood control infrastructure that would not be adversely affected as stated in Stipulation VI.E), and an archaeological field survey of the areas identified for geotechnical investigations has been conducted, and it has been determined that there are no known potential historic properties present; or
  2. A potential historic property is identified during the records and literature search or field survey and consultation process as being within the area proposed for geotechnical investigations, and the geotechnical investigation is relocated at least 50 feet outside of the boundaries of the identified resource; or
  3. An archaeological monitor meeting the qualifications described in Stipulation III.A are included as a permit condition for the 408 permission for the geotechnical investigations and the Corps has notified the consulting Tribes of the proposed geotechnical studies.
- B. If potential Historic properties are discovered during geotechnical investigations, Stipulation XII shall be followed;
- C. The Corps will prepare a Memorandum for Record (MFR) documenting the results of the records and literature search, the archaeological field survey, any decisions to relocate geotechnical investigation areas, the determination for inclusion of an archaeological monitor for ground disturbing activities, and a record of communication with Tribes, as appropriate. The resulting MFR(s) will be included in the Annual Report for any geotechnical investigations completed pursuant to Stipulation XVII each calendar year.

- D. If historic properties (except for the existing flood control infrastructure described in Stipulation VI.E) are identified within 50 feet of the proposed geotechnical investigation locations and the Corps cannot relocate the proposed investigations, the Corps will consult on the proposed geotechnical investigation pursuant to Stipulation VII.B.

## **XI. OTHER CONSIDERATIONS**

### **A. Changes to an Approved Scope of Work:**

When a requester notifies the Corps of proposed changes to an approved scope of work for an Undertaking, the Corps will complete the following review of the proposed changes and the previously completed Section 106 compliance and take the following steps before approving the proposed changes to be made:

1. If the Corps determines the change has no potential to effect a property, meets an Allowance listed in Appendix B, or the previous effect determination is still applicable, the Corps has no further responsibility to consult with SHPO and Consulting Parties for the Undertaking and may approve the change.
2. If the Corps determines that the change can be modified to meet an Allowance, conform to any applicable Standards, or a previously determined finding of effect is still applicable, the Corps may approve the change.
3. If the Corps determines that the change does not meet an Allowance; may cause additional effects to the property; does not conform to any applicable Standards; or changes a previously determined finding of effect, the Corps shall initiate consultation pursuant to Stipulation VI, Project Review, and shall complete the review process prior to approving the change.

## **XII. POST-REVIEW DISCOVERIES**

In the event of inadvertent discoveries of potential Historic Properties at any time during implementation of an Undertaking under this Agreement, The Corps is responsible for complying with the procedures set forth in 36 C.F.R. § 800.13(a). Additionally, the following precautions will be included as conditions in the 408 permission

### **A. Workforce Training:**

During implementation of Project activities, the Corps, or archeologists meeting the professional qualifications as described in Stipulation III, 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. Treatment of Human Remains:**

The Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq.) would apply to any 408 Activity that takes place on Federal land.

The landowner will remain responsible for ensuring 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.

### **XIII. CULTURAL MATERIAL TREATMENT AND CURATION**

- A. All real property must be acquired by the Requester from the underlying landowners sufficient to allow construction, including rights sufficient to manage potential Historic Properties that may be affected by construction, operation and maintenance of the project. The rights to be taken will not convey ownership of artifacts or other materials to the Federal government, but will provide for Federal custody of such artifacts and materials until analyses specified in planning documents called for in the stipulations of this Agreement are completed. Federal custody during that time will be in accordance with the provisions at 36 C.F.R. § 79. At the end of the studies, as agreed upon by consultation among the Parties to this Agreement, the Corps will relinquish custody of the artifacts and other materials to the owner.
- B. NAGPRA (25 U.S.C. § 3001 et seq.) would apply to any 408 Activity that takes place on Federal land, therefore this Agreement incorporates by reference the definitions for “human remains” and “funerary objects” set forth in 43 C.F.R § 10.2(d), which will apply to actions under this Agreement. Further treatment of Human remains is addressed in Stipulation XII.B.
- C. In most cases, artifacts and other materials will not be Federal property as the majority of 408 Activities do not occur on Federal lands. However, all original data and records concerning those items are Federal property and will be archived in accordance with 36 C.F.R. § 79 and other Federal regulations. To assure that the objectives of Federal preservation law may be met, copies of all information specific to a discrete collection of artifacts and other materials will be provided to an owner when Federal custody of the artifacts and other materials is extinguished. If a collection from a single site is relinquished among multiple owners, owners will be provided with only the information that pertains to their portion of the collection.
- D. For any data recovery studies or archaeological material collection efforts conducted on Federal lands under this Agreement, the Corps shall curate the resulting collection pursuant to 36 CFR Part 79-Curation of Federally-Owned and Administered Archaeological Collections.

### **XIV. DISPUTE RESOLUTION**

- A. Should any Signatory or Concurring 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, invite their participation, 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 will notify Signatory and Concurring Parties and forward all documentation relevant to the dispute to the ACHP. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP will either:

1. 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
  2. Provide the Corps with recommendations, which the Corps will consider in reaching a final decision regarding the objection; or
  3. 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 will 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 Stipulation XIV.A 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 will 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 will remain unchanged.
- D. The Corps will provide the Signatories and Concurring Parties with a written copy of its final decision regarding any objection addressed pursuant to Stipulation XIV.A.
- E. At any time during implementation of the measures stipulated in this Agreement should an objection pertaining to the Agreement be raised by a member of the public, the Corps will notify the Signatory and Concurring Parties and take the objection under consideration. Consultation with the objecting party will be initiated by the Corps 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 will 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 will remain unchanged.

## **XV. NOTICES**

All notices requests, consents, approvals or communications from all parties to this Agreement to other parties to this Agreement will be personally delivered, sent by United States Mail, or emailed, pursuant to Stipulation IV.A. For communications sent by United States Mail, all parties will be considered in receipt of the materials five (5) calendar days after deposit in the United States mail. Signatories agree to accept facsimiles or copies of signed documents and agree to rely upon such facsimiles or copies as if they bore original signatures.

## **XVI. AMENDMENT, REVIEW, TERMINATION AND DURATION**

- A. Amendment: Any Signatory Party to this Agreement may propose that the Agreement be amended, including but not limited to extending the duration of the Agreement, whereupon the Signatories will consult for 30 days to consider such amendment. The Agreement may be amended only upon written concurrence of all Signatories.
1. All attachments to this Agreement, and other instruments prepared pursuant to this Agreement including, but not limited to, the Project's description, initial inventory reports, and maps of the APE may be individually revised or updated through consultation consistent with Stipulation VI and agreement in writing of the Signatories without requiring amendment of this Agreement, unless the Signatories through such consultation decide otherwise. In accordance with Stipulations V, VI, VII, IX and X, the Concurring Parties, interested Tribes, and interested members of the public, will receive amendments to the Project's description, initial inventory report, and maps of the APE, 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 XVI.A, or if any Signatory proposes termination of this Agreement for other reasons, the Signatory proposing termination will 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.
1. Should such consultation result in an agreement on an alternative to termination, the Signatories will proceed in accordance with that agreement.
  2. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatory and Concurring Parties in writing.
  3. Beginning with the date of termination, the Corps will ensure that until and unless a new agreement is executed for the actions covered by this

Agreement, such undertakings will be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.

- C. Duration: This Agreement will remain in effect for five (5) years from the date of execution unless amended in accordance with Stipulation XVI.A.

## **XVII. ANNUAL REPORTING**

Annually, by January 30th, the Corps will provide all parties to this Agreement a summary report detailing work carried out pursuant to its terms. Such report will describe progress made implementing the terms of the Agreement; include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Corps' efforts to carry out the terms of this Agreement. The report shall include a summary or list of all Undertakings completed pursuant to Stipulation VII.A or VIII of this Agreement. The Corps will arrange a meeting with the Signatories within 30 days after the submission of the Annual Report to discuss the on-going implementation of the Agreement.

## **XVIII. EFFECTIVE DATE**

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

EXECUTION of this Agreement and implementation of its terms evidence that the Corps has taken into account the effects of these undertakings on historic properties and afforded ACHP a reasonable opportunity to comment on the Corps' administration of Permissions under Section 408 of the Rivers and Harbors Act of 1899 for the Sacramento District.

**SIGNATORY PAGE**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION  
FOR SECTION 408 PERMISSIONS WITHIN THE CORPS BOUNDARIES  
OF THE SACRAMENTO DISTRICT, CALIFORNIA**

**U.S. ARMY CORPS OF ENGINEERS**

---

Col. James J. Handura  
Colonel, U.S. Army  
Commander & District Engineer

Date:

**SIGNATORY PAGE**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION  
FOR SECTION 408 PERMISSIONS WITHIN THE CORPS BOUNDARIES  
OF THE SACRAMENTO DISTRICT, CALIFORNIA**

**CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

---

Julianne Polanco  
State Historic Preservation Officer

Date:

**SIGNATORY PAGE**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION  
FOR SECTION 408 PERMISSIONS WITHIN THE CORPS BOUNDARIES  
OF THE SACRAMENTO DISTRICT, CALIFORNIA**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

---

John M. Fowler, Executive Director

Date:

**SIGNATORY PAGE**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION  
FOR SECTION 408 PERMISSIONS WITHIN THE CORPS BOUNDARIES  
OF THE SACRAMENTO DISTRICT, CALIFORNIA**

**U.S. ARMY CORPS OF ENGINEERS**

\_\_\_\_\_  
Randy P. Olsen, Chief Operations Division

Date:

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION  
FOR SECTION 408 PERMISSIONS WITHIN THE CORPS BOUNDARIES  
OF THE SACRAMENTO DISTRICT, CALIFORNIA**

**TRIBAL SIGNATURE PAGES:**

The Corps invited all interested Tribes to participate in the consultation to development this Agreement and to enter into this Agreement as an Invited concurring parties. Interested Tribes have been invited to notify the Corps of any initial interest in executing this Agreement and signature pages for all Tribes indicating an initial interest are included in this Agreement.

The Corps will initiate government-to-government consultation with all other Indian Tribes that may have an interest in historic properties, including properties of religious and cultural significance, in the State of California as these Indian Tribes are identified by the Corps.

The Corps will incorporate additional executed signature pages by Invited concurring parties into this Agreement in the occasion that they are requested.

**CONCURRING PARTIES**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION  
FOR SECTION 408 PERMISSIONS WITHIN THE CORPS BOUNDARIES  
OF THE SACRAMENTO DISTRICT, CALIFORNIA**

Tribe name add the number of pages at such time

By: \_\_\_\_\_

Date: \_\_\_\_\_



## Appendix A

### The Corps “Section 408 Permissions” Program Summary

#### Introduction

The U.S. Army Corps of Engineers (Corps), Sacramento District has constructed, and continues to construct, significant and expansive civil works projects within its geographical area of responsibility in California. Due to the presence of these existing civil works projects, the Sacramento District receives numerous requests each year from private interests and local and state agencies to perform activities that would affect or alter the Corps civil works projects. When requests are received, they are evaluated to determine if the proposed alteration would impair the usefulness of the Corps project or be injurious to the public interest. This Programmatic Agreement will be applicable to requests to *alter* existing federal civil works projects within California in the Sacramento District. The Sacramento District’s geographical area of responsibility in the state of California is shown in Figure 1 below.

#### Section 408 Permissions

The authority to grant permission for temporary or permanent use, occupation or alteration of any Corps civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 (“Section 408”). Section 408 authorizes the Secretary of the Army (Secretary), on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a Corps project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary’s authority under Section 408 has been delegated to the Corps, Chief of Engineers. The Corps Chief of Engineers has further delegated the authority to the Corps, Directorate of Civil Works, Division and District Commanders, and supervisory Division Chiefs depending upon the nature of the proposed activity. At the same time, the project is also reviewed for National Environmental Policy Act (NEPA) compliance. To implement this portion of the law, the Corps developed an Engineering Circular (EC), entitled, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects (EC 1165-2-216), which more specifically delineates the process for reviewing these “Section 408 Permissions”. The EC allows each Corps District office to develop a Procedural Review Plan to be used for Section 408 requests that are similar in nature and have similar impacts.

The granting or denial of permission pursuant to Section 408 is not a permit action handled by the Regulatory Program. Moreover, if a proposed alteration also requires authorization pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and/or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (Section 10/404/103), district Regulatory and Section 408 personnel will coordinate throughout their respective evaluations. Through coordination, whichever permitting action (404/408) has the larger jurisdictional area will take the lead on required consultations. Regardless of who takes the lead on the consultations, coordination will ensure that the consultation covers both permitting actions.

### **Typical Actions Requiring Section 408 Permission**

Within the Sacramento District's area of operation, typical requests for alterations to existing civil works projects include, but are not limited to, the following examples:

- Pipeline crossings of levees, floodwalls, and navigation channels including horizontal directional drills, open cuts, ramp-overs, and floodwall penetrations
- Seepage and stability berms
- Utility lines including fiber optic, water, natural gas, and electricity, both aerial and underground, including associated structures and support poles
- Bulk material conveyor systems and borrow sites
- Culverts, drainage pipes, and drainage ditches
- Vehicle and pedestrian bridges
- Bank stabilization and erosion control features, erosion repair, and erosion control
- Boat docks, marinas, boat ramps, and associated facilities
- Cattle guards, fences, and gates
- Trails, signage, lighting, and other similar operational, recreational, and decorative features
- Soil investigations, including borings, piezometers, and inclinometers.
- Levee ramps, maintenance roads, and crossings
- Agricultural Activities
- Channel sediment removal and around structures
- Debris obstruction removal
- Private residence construction, additions, swimming pools, stairways and handrails, and driveways
- Fish screens
- Floodway restoration projects
- Retaining walls
- Rock removal
- Water supply wells

The Sacramento District maintains that actions that require *permissions* are similar in nature and are *typically* of small size, not very complex, and have minimal to no impacts (similar impacts) to existing civil works projects. However, there are some actions that require permissions that are large-scale, complex, and have the potential to significantly affect the operation of existing civil works projects.

Per EC 1165-2-216, the scope of the analysis for Section 408 reviews is limited to the lands and real estate property interests acquired for the Corps projects and those adjacent areas that are directly or indirectly affected by the alteration. If a proposed alteration is part of a larger project that extends beyond the Corps project boundaries, the Sacramento District staff would determine what portions or features of the larger project the Corps has control and responsibility over to warrant inclusion as part of the evaluation, as described in EC 1165-2-216.

Implementation of this PA would not change the engineering and real estate reviews conducted for every Section 408 request.

**Sacramento District Section 408 Jurisdiction**

Section 408 Permissions would be required for alterations made to federally authorized Civil Works Projects within the following counties that are within the Sacramento District boundaries in the State of California.

- Alameda (part of)
- Alpine
- Amador
- Butte
- Calaveras
- Contra Costa (part of)
- Colusa
- El Dorado
- Fresno
- Glenn
- Kern (part of)
- Kings
- Lake
- Lassen
- Madera
- Mariposa
- Merced
- Modoc
- Mono (part of)
- Nevada
- Placer
- Plumas
- Sacramento
- San Joaquin
- Shasta
- Sierra
- Solano (part of)
- Stanislaus
- Sutter
- Tehama
- Tulare
- Tuolumne
- Yolo
- Yuba



Figure 1: The Sacramento District Civil Works geographical boundary in the State of California.

## **Appendix B Programmatic Allowances**

There are numerous Corps civil works projects within the boundaries of the Sacramento District within the state of California. Each year the Sacramento District receives requests through our project sponsors from private, public, tribal, and other federal entities to alter the Corps federally authorized civil works projects pursuant to Section 408. The Sacramento District receives numerous Section 408 requests for minor alterations to the Corps projects each year; a total of 105 requests were received in 2015 and 107 requests were received in 2016. The majority of these requests are for relatively minor alterations of the levees or channels, such as installation of irrigation pipes, horizontal directional drilling for the placement of utility lines, and private recreational boat docks. Many of the project descriptions for proposed alterations are similar and the effects tend to be minor or negligible, however, the current review and approval process is time intensive. The need for this agreement document is to increase efficiencies to simplify the review process of Section 408 requests for minor alterations to the Corps federal projects.

This list of Programmatic Allowances (Allowances) enumerates the Corps Permission activities that based on the Corps experience, may have no or minimal effect on historic properties if implemented as specified in this Appendix and will not require review by the SHPO and Tribe(s). Should an unexpected discovery, unidentified property, or unexpected effect be encountered, work must stop and compliance with Stipulation XII is required.

**These allowances can only be used by qualified staff in accordance with Stipulation III.A of this Agreement.** In accordance with Stipulation VII.A, Undertakings composed entirely of work described by the Allowances do not require further Section 106 review.

“In-kind,” when referenced in the Allowances for historic materials and features shall be in accordance with the *Standards and otherwise consistent with the relevant Preservation Brief* (<https://www.nps.gov/tps/how-to-preserve/briefs.htm>), and shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including design, design form, texture, profile, dimensions, proportion, and workmanship. Where severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

### **Allowances arranged by Activity**

- I. **Administrative Actions:** The Corps has determined that the following types of activities have limited or no potential to affect historic properties and the Corps has no further Section 106 responsibilities with regards to them.
  - a. Monitoring, data gathering, and reporting in support of 408 Permissions, ATR review, etc.

- b. Permissions for planning, studies, design and engineering costs that involve no commitment of resources other than staffing and associated funding.
- c. Funding the administrative action of acquisition or lease of existing facilities where planned uses conform to past use or local land use requirements and do not extend outside the existing facility boundaries.

**II. GROUND DISTURBING ACTIVITIES AND SITE WORK** are limited to the proposed activities, including the areas where the activity is staged, as described below. Project review should take into account the entirety of the proposed activities including staging, site access, site cleanup, and possible site work (e.g. grading for positive drainage, vegetation removal) as potential ground-disturbing activities.

If the project substantially conforms to the existing footprint or is one of the situations described below in Allowance A. General (1-4) and no known eligible or unassessed archaeological site (i.e. no historic property or potential historic property) is within the footprint and area of project activities, the Allowance may still be applied. If a potential ground-disturbing activity including staging, site access, site cleanup, and possible site work (e.g. grading for positive drainage, vegetation removal) falls within a known eligible or unassessed site, SHPO Review per Stipulation VII.B., will apply. If the permission request falls outside of the existing footprint and if the General provisions and/or the other allowances are not met, Internal Review, per Stipulation VII. A., will also apply.

**A. GENERAL.** In certain instances the nature, scope, and magnitude of the proposed permission request work may be such that there is little likelihood that either a historic property exists or is likely to be affected. Four such situations are where the work would occur within:

1. Areas that have been extensively modified by previous civil works; or
2. Areas which have been created in modern times (less than 50 years old and documented) and do not qualify as an Exceptionally Significant resource per the National Park Service (Criteria Consideration G); or
3. Areas which have been adequately surveyed for cultural resources meeting current SHPO standards and no eligible or unassessed/unevaluated properties have been recorded; or
4. Certain types of work that are of such limited nature and scope that there is little likelihood of impinging upon a historic property, even if such properties were to be present, examples of these certain types of work are small-scale investigations like soil borings, signpost, or installation of monitoring equipment such as piezometers and inclinometers.

**B. WATER RESOURCE MANAGEMENT AND CONTROLS**

1. Canal Systems

- a. In-kind repair or in-kind replacement to canal systems and in-kind repairs or in-kind replacement of minor associated elements including limited upgrades (e.g. weirs, gates, revetments, and safety elements).
2. Dams, Levees, and Floodwalls
    - a. In-kind repair of dams, levees, floodwalls and related features, including spillways, tide gates, and fuse plugs, provided the work occurs within the existing construction footprint, and does not alter the existing pool.
3. Dredging
    - a. Sediment and debris removal from human-made navigational facilities (navigation channels, bar channels, flotation channels, etc.) and canals – maintenance dredging. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted disposal site(s).
4. Ecosystem Restoration Features
    - a. In-kind repair or in-kind replacement or upgrading of containment berms, fish ladders, fish screens, and other features.
    - b. Restoration of stream channels by removing blockages of brush, trees, and sediment, or by placement of in-stream structures (e.g., boulders, stumps, logs, and plantings), fish-cover devices, and spawning gravels, as long as restoration stays within the active stream channel.
    - c. Placement of temporary fish monitoring equipment, including the use of hand-driven and removable bank anchors.
    - d. Revegetation that require minimal scarification and excavation with hand tools.
    - e. Restoring, through excavation and/or change in water management, historic topography or natural water flow to former wetlands that are now or once were farm fields or pastures that have been previously disturbed area and depth through laser leveling excavation, cultivation, discing, ripping to eliminate hardpan, or tiled.
5. Waste-Water Treatment Lagoon Systems/Water Treatment Plants
    - a. In-kind repair or in-kind replacement, or minor upgrades of waste-water treatment lagoon systems, water intake and outflow systems for water treatment plants, etc.

## 6. Water Control Structures

- a. Removal, replacement and/or installation of flap-gates or flood gates, and bar screeners provided that activities are confined to the existing construction footprint or does not require new or additional water impoundment areas to be excavated to construct said features.
- b. Sediment and debris removal from human-made drainage facilities, including retention/detention basins, ponds, ditches, and canals. The sediment may be used to repair eroded banks or disposed of at an existing licensed or permitted spoil site. This allowance does not apply to historic canals, canal structures, or historic features.

**C. UTILITIES, COMMUNICATIONS SYSTEMS, AND TOWERS** are limited to distribution and collection systems for water, electricity, gas/ oil, and communications, including sewer, water, drains, electrical service and distribution, gas, communications, leaching systems, cesspools, and septic tanks, when proposed repair and replacement activities substantially conform to the existing footprint. ***Any proposed new or upgraded construction, including staging areas and access, etc., outside of the existing footprint, including associated features and structures, is limited to the situations outlined under Section II.A. above.***

### 1. General

- a. In-kind repair or in-kind replacement, or minor upgrading of utilities within the existing footprint.
- b. Potholing or excavation to expose existing utility lines or pipes within existing right-of-ways.
- c. Abandonment in place and grouting of existing buried pipe or water lines less than 50 years old.
- d. Installation of new utilities and associated features within existing rights-of-way provided the activities are not within a National Register listed or eligible historic district and the right-of-way was adequately surveyed for cultural resources.
- e. Within the existing rights-of-way, elevation of existing utilities and associated features and structures within or adjacent to existing footprint provided the activities are not within a National Register listed or eligible historic district.
- f. Directional boring of new/replacement service line and related appurtenances within existing rights-of-way or utility corridors.



- g. The excavation of slit trenches along existing rights-of-way.
- h. Installation of new water wells.
- i. In-kind repair or replacement, or minor upgrades of water towers provided activities take place within the existing footprint. Ground-level facilities that do not expand the footprint by more than 10% may be added or expanded, provided the activities are not within a National Register listed or eligible historic district. This allowance does not apply to the replacement of water towers over fifty (50)-years of age (construction date as noted in the project documentation, as stated by the Requester, or by a photograph/site visit).
- j. In off-road alignments, additions of new poles within the existing rights-of-way, such as mid-span poles, and relocation/realignment of segments of power lines to existing roadways. Minor mitigation measures (e.g., increases in pole diameter) shall be covered by this Allowance.
- k. Installation of exterior security features and early warning devices on existing utility poles on other existing utilities.

## 2. Generators and Utilities

- a. In-kind repair or in-kind replacement, or minor upgrades, elevation, and/or installation of generators, HVAC system and similar equipment as long as they are placed or located where not highly visible from the street.

## 3. Communication Equipment/Systems and Towers

- a. Acquisition, installation, or operation of communication and security equipment/systems that use existing distribution systems, facilities, or existing infrastructure right-of-way.
- b. The collocation of communication and security equipment on existing towers and buildings/structures less than fifty (50)-years in age (construction date as noted in the project documentation, or by the Requester, or by a photograph/site visit), provided that the work does not increase existing tower height or existing footprint by more than 10%.
- c. Enhancement, repair or replacement of existing communication towers and antenna structures provided the work does not increase existing tower height or existing footprint by more than 10%.
- d. Installation of new temporary (not to exceed twelve (12)-months) communications towers and antenna structures provided that the work does not require modification of buildings/structures fifty (50)-years or older and

does not have ground disturbing activities that occur on a known eligible or unassessed archaeological site.

- e. Installation of new communication towers, less than two-hundred (200)-feet tall, in previously developed urban complexes and rural area when the work does not require modification of buildings/structures fifty (50)-years or older, and is not within one-thousand (1,000)-feet of the boundaries of a historic property.

**D. BANK STABILIZATION AND EROSION CONTROL FEATURES** including Footings, Foundations, Retaining Walls, Slopes, and Slope Stabilization Systems

1. In-kind repair, or in-kind replacement, or reinforcement of footings, foundations, retaining walls, slopes, and slope stabilization systems (e.g., placement of rip-rap, gabion baskets, crib walls, Articulated Concrete Matting, etc.).
2. Non-excavation erosion control involving placement of stone or soil-filled quarry stone within erosion footprint.

**E. RECREATION, LANDSCAPING, AGRICULTURAL FEATURES**

1. In-kind repair or in-kind replacement, or minor upgrades in the same location to recreational facilities (e.g., playgrounds, campgrounds, boat ramps, stands, athletic fields, and parks). This includes features (e.g., fire pits, dump stations and utility hook-ups, above-ground swimming pools, pathways, simple wooden/wire stream crossings, decks), recreational structures and equipment (e.g., benches, bleachers, permanent seating, score boards, batting cages, basketball goals, swing sets, picnic tables), and signage (e.g. street signs, traffic signs, and freestanding facility signage).
2. In-kind repair or in-kind replacement, or minor upgrades to landscaping elements (e.g., fencing, boardwalks, free standing walls, paving, planters, irrigation systems, lighting elements, signs, flag poles, ramps, steps, trellises). Minor mitigation measures (e.g. increases in pole diameter, addition of new safety anchors) will be covered by this Allowance.
3. Installation of small-scale recreation features, landscaping features, and agricultural features, such as cattle guards and simple, small diameter post and wire fences.
4. Installation of in-ground swimming pools within documented imported fill.
5. Landscape or environmental restoration elements.
6. Installation of stairs on levees with the condition that these are not permanently excavated within the levee and are reversible.

7. Cultivation within previously cultivated areas.
8. Replacing row crops and orchards with in-kind.

**F. TRANSPORTATION FACILITIES** are limited to proposed activities when they substantially conform to the existing civil works footprint and staging areas are limited to existing hardscape, gravel, or equivalent surfaces.

1. Bulkheads, Piers, Docks, Wharfs, Mooring Pilings, Dolphins, Boardwalks, Boat Ramps, and Dune Crossovers
  - a. In-kind repair or in-kind replacement, or minor upgrades such as, codes and standards, to existing bulkheads, piers, docks, wharfs, when placed in the existing civil works construction footprint and not adjacent to a National Register -listed or eligible historic district.
  - b. In-kind repair, or in-kind replacement, or installation of new bollards, fenders, mooring pilings, and associated protective barriers when placed in the existing civil works construction footprint.
  - c. Installation of boat docks within the high-water mark of waterways. Installation measures are limited to placing deadmans and pilings that do not exceed a depth of 2 ft.
2. Roads and Roadways (Levee Ramps and Crossings)
  - d. Construction of temporary emergency access roads to allow for passage of emergency vehicles, per Stipulation VII.F, Review of Emergency Undertakings.
  - b. Re-establishment, armoring and/or minor upgrading of existing roadway ditches.
  - c. In-kind repair, in-kind replacement, and placement of traffic control devices such as traffic signs and signals, delineators, pavement markings, traffic surveillance systems.
  - d. Installation and removal of temporary traffic control devices, (e.g., pre-formed concrete barriers and fencings).
  - e. In-kind repair or in-kind replacement of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is permitted.
  - f. In-kind repair or in-kind replacement, or minor upgrade of culvert systems and arches beneath roads or within associated drainage systems, including

provision of headwalls, riprap and any modest increase in capacity for the purposes of flood risk reduction or to meet current codes and standards, provided that the work substantially conforms to existing construction footprints and is limited to the existing right-of-way and provided these structures are not historic in nature. For stone or brick culverts or arches beneath roadways, this Allowance only applies to in-kind repair.

3. Roads and Roadways (ADA/minor-upgrade):

- a. In-kind repair to historic paving materials for roads and walkways using the same materials.
- b. In-kind repair or in-kind replacement, or minor upgrade of road lighting systems, including period lighting fixture styles.
- c. In-kind repair or in-kind replacement, or minor upgrade of road appurtenances such as curbs, shoulders, fences, crosswalks, and sidewalks.
- d. Installation of speed bumps and other traffic calming devices and/or enhanced curbs.
- e. Construction of new ADA ramps, curbs, and crosswalks. This allowance applies within a National Register-listed or eligible historic district, provided the work meets the following:
  - i. Cutting and removal of historic materials is limited to the footprint of the proposed ramp;
  - ii. Historic materials are re-used, if feasible;
  - iii. New paving materials match the physical characteristics of the historic material (size, configuration, color, texture, and material type);
  - iv. Truncated dome mats will be neutral in color to the extent consistent with ADA requirements; and
  - v. Character-defining identification or way finding features (e.g., signage, street tiles, historical markers) shall be salvaged and reinstalled in their original locations and orientation, or as close to their original locations as possible. Damaged or missing elements will be replaced with salvaged or in-kind materials.

4. Bridges

- a. Installation of a temporary (Bailey-type) bridge over an existing structure, such as a former road, bridge, or levee location, to allow passage of emergency vehicles or construction activities.

- b. In-kind repair or in-kind replacement of bridges and bridge components (e.g. abutments, wing walls, piers, decks, and fenders) within the existing footprint. This Allowance does not apply to the replacement of historic bridges identified on the Caltrans website (historic bridge inventory): <http://www.dot.ca.gov/env/cultural/bridges-and-tunnels.html>.
- c. Elevation of non-historic bridges on existing foundations and footings. This Allowance does not apply to work located within or adjacent to a National Register listed or eligible historic district.

#### 5. Rail Systems

- a. In-kind repair or in-kind replacement of safety components.
- b. In-kind repair or in-kind replacement of existing active track systems (on same alignment) and in-kind repair of passenger loading areas.
- c. Repair of crossings, gates, and signals.

### III. **STANDING STRUCTURES AND BUILDINGS** when proposed activities, including the area where the activity is staged, described below substantially conform to the existing footprint:

**A. ABOVE-GROUND REPAIR OR RETROFIT OF BUILDINGS** less than fifty (50)-years old (construction date as noted in the project documentation, or by the Requester, by a photograph/site visit, county assessor's data, or cartographic sources) provided the building does not meet NPS Criteria Consideration G for Exceptionally Significant properties.

#### **B. UTILITARIAN STRUCTURES**

- 1. Substantially in-kind repair or in-kind replacement of utilitarian structures (e.g. pump houses, storage buildings, warehouses, or bulk material conveyer) less than fifty (50)-years old (construction date as noted in the project documentation, or by the Requester, by a photograph/site visit, county assessor's data, or cartographic sources), including above-ground pipelines within the existing footprint that do not require pile-driven foundations.

#### **C. STANDING STRUCTURE COMPONENT SYSTEMS**

- 1. Utilities and Mechanical, Electrical, and Security Systems Allowances do not apply to ground disturbing activities
  - a. In-kind repair or in-kind replacement, or limited upgrading of interior utility systems, including mechanical (e.g., heating, ventilation, air conditioning),

electrical, and plumbing systems. This Allowance does not provide for the installation of new exposed ductwork or the lowering of ceilings to accommodate mechanical, electrical, and security systems. This Allowance does not apply to character defining features (e.g. grilles) where exposed to view. Surface-mounted wiring, conduits, or piping is acceptable provided that installation of system hardware does not damage or cause the removal of character-defining architectural features or materials, and can be easily removed in the future. This Allowance does not include increasing the size (e.g. width, depth, length) of existing channels or cuts in historic material.

- b. The elevation of heating, ventilation, and air conditioning system (HVAC) and mechanical equipment within a structure or on a roof provided that it is not visible from the ground level.
- c. Installation or replacement of interior fire detection, fire suppression, or security alarm systems. Surface-mounted wiring, conduits, or piping is acceptable provided that installation of system hardware does not damage or cause the removal of character-defining architectural features or materials, and can be easily removed in the future. This Allowance does not include increasing the size (e.g. width, depth, length) of existing channels or cuts in historic materials.
- d. Installation or replacement of communication and surveillance security systems, such as cameras, closed-circuit television (CCTV), alarm systems, and public address systems. Surface-mounted wiring, conduits, or piping is acceptable provided that installation of system hardware does not damage or cause the removal of character-defining architectural features or materials, and can be easily removed in the future. This Allowance does not include increasing the size (e.g. width, depth, length) of existing channels or cuts in historic materials.
- e. Installation of building access security devices, such as card readers, enhanced locks, and security scanners (e.g., metal detectors), provided the device does not damage or cause the removal of character-defining architectural features or materials and can be removed in the future without impacts to significant architectural features.
- f. Providing openings and installation of flood resistant materials above ground only in a building that is less than fifty (50)-years of age (construction date as noted in the project documentation, or by the Requester, or by a photograph/site visit) to allow in water in conjunction with floodproofing.

## 2. Windows and Doors

- a. In-kind repair of damaged or severely deteriorated historic windows and window frames, shutters, storm shutters, doors and door frames, and associated hardware, where profiles, elevations, details and materials match

those of the originals. Whenever possible original materials should be retained for future information and/or repair and/or reuse.

- b. In-kind replacement of window panes. Clear plate, double, laminated or triple insulating glazing can be used, provided it does not result in altering or damaging the existing window material, tint, form, muntin profiles, or number of divided lights. This Allowance does not apply to the replacement of intact decorative or archaic glass. Historic windows or glazing may be treated with clear window films.
  - c. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non character-defining spaces with metal blast resistant doors and frames.
  - d. Installation of security bars over windows on off-street elevations that does not result in additional damage to character-defining features.
  - e. In-kind repair or in-kind replacement of interior or exterior protective shutters, storm screens, screen drops, storm fabric, interior blast shields, and door glazing.
  - f. Removal of non-contributing, incompatible windows and/or doors which were replaced within the past fifty (50) years and their replacement with new window, door, and hardware which meets the *Standards*.
  - g. Strengthening of entry doors and bracing of garage doors provided they do not result in altering the existing door form and appearance.
3. Exterior Walls, Cornices, Porches, and Foundations (for any proposed ground disturbance, refer to II)
- a. In-kind repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding and chemical cleaning.
  - b. In-kind repair of walls, porches, foundations, columns, cornices, siding, balustrades, stairs, dormers, brackets, trim, and their ancillary components or in-kind replacement of severely deteriorated or missing or lost features, as long as the replacement pieces match the original in detail, design, profile, proportion, and material.
  - c. In-kind repair or in-kind replacement of signs or awnings.
  - d. Installation of temporary stabilization bracing or shoring, provided such work does not result in additional damage and is reversible.

- e. Anchoring of walls to floor systems provided the anchors are embedded and not visible on the exterior; are reversible to the greatest extent possible, and does not result in additional damage or alteration to character-defining features.
- f. In-kind repair of concrete and masonry walls, columns, parapets, chimneys, or cornices or limited in-kind replacement of damaged components including comparable brick, and mortar that is as soft or softer than and matches the color, content, rake, and joint width of historic mortar.
- g. Bracing and reinforcing of walls, chimneys and fireplaces, provided the bracing and reinforcing are not visible on the exterior; is reversible to the greatest extent possible, and does not result in additional damage or alteration to character defining features.
- h. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in-kind, including mortar that matches the color, content, rake, tooling, and joint width where occurring.
- i. In-kind repair or in-kind replacement of elements of curtain wall assemblies or exterior cladding that is hung on the building structure, usually from floor to floor, and when the color, size reflectivity, materials, and visual patterns are unaltered.

#### 4. Roofing

- a. Installation of scaffolding, polyethylene sheeting, or tarps, provided such work will not result in additional damage or irreversible alterations to character defining features.
- b. In-kind repair or replacement, or strengthening of roofing, rafters, fascia, soffits, gutters, verge boards, leader boxes, downspouts, or other damaged roof system components provided that work does not result in alterations to character defining features.
- c. Repairs to flat roof cladding, including changes in roofing materials, where the repairs are not highly visible from the ground level.
- d. Replacement of three-tab asphalt singles with dimensioned architectural shingles; replacement of cement asbestos shingles with asphalt-based shingles or other roofing of similar appearance to the original such as slate; in-kind replacement of metal roofing materials; replacement of corrugated asbestos panels with corrugated metal panels or other roofing of similar appearance to the original; and replacement of untreated wood shingles or shakes with similar items of fire resistant wood.

#### 5. Weatherproofing and Insulation



- a. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.
- b. In-kind repair or in-kind replacement of insulation systems, provided that existing interior plaster, woodwork, exterior siding, or exterior architectural detail is not altered. This Allowance does not include spray foam insulation of any kind.

**D. STRUCTURAL RETROFITS** (for any proposed ground disturbance, refer to II)

1. The installation of the following retrofits/upgrades, provided that such upgrades are not visible on the exterior or within character-defining historic interiors; is reversible to the greatest extent possible, and does not result in additional damage or alterations to character defining features: attic bracing, cross bracing on pier and post foundations; fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical, and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and automatic gas shut off valves.
2. Replacement, repair or installation of lightning rods.
3. Anchoring of buildings to resist flotation, collapse, and lateral movement provided the anchors are not visible on the exterior, is reversible to the greatest extent possible, and does not result in additional damage or alteration to character defining features.
4. The installation of the following upgrades, provided that such upgrades are not visible on the exterior, not attached to character-defining structural elements, and is reversible to the greatest extent possible: installation of tie down straps;; anchoring of fuel tanks; installation of backflow valves; bracing of building contents.
5. Bracing and bolting of walls to address hydrostatic and hydrodynamic forces provided the bracing is not visible on the exterior, is reversible to the greatest extent possible and does not result in additional damage or alteration to character defining features.
6. The installation of attached porches or concrete patios provided, the square footage is limited and it does not result in additional damage or alteration to character defining features.

**E. ELEVATION, DEMOLITION, AND RECONSTRUCTION**

- a. Activities related to the elevation, demolition and/or reconstruction of buildings or structures less than fifty (50)-years of age (construction date as

noted in the project documentation, or by the Requester, or by a photograph/site visit) so long as the proposed activities substantially conform to the existing footprint, the buildings or structures are not located within or adjacent to a National Register-listed or eligible historic district or within one-thousand (1,000)-feet of a known eligible or unassessed archaeological site.