

## **APPENDIX C**

---

Cultural Resources Programmatic Agreement

**PROGRAMMATIC AGREEMENT  
AMONG THE U.S. ARMY CORPS OF ENGINEERS,  
THE SACRAMENTO AREA FLOOD CONTROL AGENCY, AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

**REGARDING THE ISSUANCE OF PERMISSION UNDER THE AUTHORITY OF SECTION 408 OF THE RIVERS AND HARBORS ACT OF 1899 AND SECTION 404 OF THE CLEAN WATER ACT FOR THE NATOMAS LEVEE IMPROVEMENT PROGRAM, LANDSIDE IMPROVEMENTS PROJECT**

**WHEREAS**, the U.S. Army Corps of Engineers, Sacramento District (Corps) proposes to review an application that seeks permission for alteration of flood control structures under the authority of Section 408 of the Rivers and Harbors Act and to issue one or more permits to discharge fill to the waters of the United States under the authority of Section 404 of the Clean Water Act to the Sacramento Area Flood Control Agency (SAFCA) for the Natomas Levee Improvement Program Landside Improvements Project (Project); and

**WHEREAS**, The Corps has determined that the issuance of these permissions and permits constitute an undertaking per 36 CFR 800.16(y), which require compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966 as amended (16 U.S.C. 470f); and

**WHEREAS** the Project includes improvements to an extensive levee system surrounding the Natomas Basin and landscape and irrigation/drainage infrastructure modifications that will be implemented in three construction phases, currently scheduled for 2008, 2009, and 2010; and

**WHEREAS**, the Corps has determined that this undertaking will have an adverse effect on at least one Historic Property that has been determined eligible for inclusion in the National Register of Historic Places (NRHP), CA-SAC-485/H; and

**WHEREAS**, because of the complex and phased nature of the improvements, the Corps has not yet determined the exact area of potential effects (APE), nor has SAFCA acquired all of the rights-of-entry, easements and ownership interests that would allow a complete inventory and determination of effects on Historic Properties; and

**WHEREAS**, the Natomas Basin is sensitive for buried archaeological resources that cannot be accurately located prior to construction; and such buried sites may also be Historic Properties, and therefore SAFCA and the Corps need to document a framework for managing post-review discoveries per 36 CFR Section 800.13, including evaluation of those resources, assessment of effects, and resolution of potential adverse effects; and

**WHEREAS**, at such time as any unevaluated cultural resource may be discovered, it may require archaeological data recovery and/or other historic preservation activities, in compliance with Section 106 of the National Historic Preservation Act, concurrent with *active* construction; and

**WHEREAS**, the urgency of flood control improvements require a management framework for Historic Properties that will be implemented after the execution of this agreement in an expedited manner that thus departs from the process normally used under 36 CFR Section 800 et seq., yet still fulfills the requirements of Section 106 of the NHPA; and

**WHEREAS**, SAFCA has been invited to participate as a signatory to this Programmatic Agreement (PA) by the Corps and the California State Historic Preservation Officer (SHPO); and

**WHEREAS**, the Corps has consulted The Ione Band of Miwok Indians, the Shingle Springs Band of Miwok Indians and the United Auburn Indian Community, and they have been invited to concur in this PA; and

**WHEREAS**, the Corps shall make the terms and conditions of this PA as part of the conditions of any permissions and permits issued by the Corps for this project; and

**WHEREAS**, SAFCA has agreed to undertake responsibility for compliance with the NHPA on its own behalf, and on behalf of the Central Valley Flood Protection Board; and

**WHEREAS**, the Corps has consulted with the SHPO and the Advisory Council on Historic Preservation in accordance with regulations implementing Section 106 of the NHPA;

**WHEREAS**, the Council has been consulted and declined to participate in this agreement;

**NOW, THEREFORE**, the Corps, the SHPO, and SAFCA agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on Historic Properties.

The Corps shall ensure that the following stipulations of this PA are carried out.

## **STIPULATIONS**

### **I. DEFINITIONS**

The terms used in this Programmatic Agreement shall be as defined in regulations implementing Section 106 of the NHPA, and as follows:

**“APE (Area of Potential Effect)”** means any location at which any Project development activity will be constructed; and locations of any Project-related construction staging areas, borrow areas, and materials stockpile areas; and the locations of any other Project development activities. The APE shall be defined so as to include the maximum spatial dimensions of all Project-related construction and operations rights-of-way, easements, areas which potentially may be affected by Project activities, and other properties to which SAFCA has access, whether on a temporary or permanent basis, or ownership for Project development.

**“Concurring parties”** means their concurrence indicates that they are in agreement with the terms of the PA.

**“Consulting parties”** means the Corps, the SHPO, and SAFCA who are signatories to this PA. Only signatories have the authority to amend or terminate this PA.

**“Cultural resources”** means any property or location that was created, modified, or used by people at least 50 years in the past. Cultural resources include but are not limited to Historic Properties and traditional cultural properties/places (i.e., NRHP listed or eligible properties as defined at 36 CFR Part 60).

**“Historic Property”** means a cultural resource that has been determined eligible for or is listed on the NRHP (i.e., NRHP listed or eligible properties as defined at 36 CFR Part 60), either by formal nomination

and listing or by concurrence between federal agencies and the SHPO.

**“Historic preservation”** means any activity conducted in accordance with the NHPA and its implementing regulations to, among other things, inventory, evaluate, manage, or treat cultural resources such as buildings, structures, sites, districts, and objects eligible for, or that may be determined eligible for, listing in the NRHP according to eligibility criteria at 36 CFR Part 60.

**“Project development activities”** means any physical action related to the Project that has the potential to damage or otherwise alter those characteristics of Historic Properties that would make them eligible for listing in the NRHP.

## II. STANDARDS

**(A.) Professional Qualifications.** All technical work required for historic preservation activities implemented pursuant to this Programmatic 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 archaeology 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 that is required under this Programmatic Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SAFCA or SAFCA’s consultants.

**(B.) Historic Preservation Standards.** Historic preservation activities carried out pursuant to this Programmatic 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 pursuant to this Programmatic Agreement will be provided to the consulting parties and shall ensure that all such reports 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).

## III. PROJECT DESCRIPTION

**(A) PROJECT Description.** A description of the Project is found in the Final Environmental Impact Report (November 2007). A summary of the Project’s description in the environmental impact report is provided as **Attachment A** and is made a part of this Programmatic Agreement.

**(B) Existing Conditions.** An archival search and archaeological survey have been completed for all areas of the APE as currently defined to which SAFCA currently has access, and which currently are not covered by paving, built environment features, or agricultural crops. A report of the results of archival research and archaeological survey, “Cultural Resources Inventory Reports, Part 1 – Natomas Levee Improvement Program Landside Improvements Project, Sacramento and Sutter Counties, California” (October 2007) is made **Attachment B** to this Programmatic Agreement.

A number of prehistoric sites are known to be present along the banks of the Sacramento River. However, archaeological survey of the area is of limited value because the alluvial depositional environment may obscure and bury sites, leaving no surface manifestation of those archaeological resources. For most of the length of the Project, levees have been built on the riverbanks. These levees are one focus of the Project’s activity, and occupy a substantial portion of the Project’s APE. Furthermore, it has not been established

whether certain known sites in proximity to the Project's development activities extend under the existing levees. The existing levees both obscure ground surfaces and prevent subsurface archaeological testing within their footprints. Because of these conditions, a full assessment of archaeological sites that may be present in the APE cannot be made in advance of construction. There is no definitive information, even for sites known to be in Project's proximity, of site boundaries relative to the APE, or of the significance or integrity of any portions of such sites that may be within the APE. For these reasons, even though archaeological deposits may extend into the APE, and even though some of these deposits may qualify as Historic Properties, it is impossible to develop meaningful site-specific Historic Properties Treatment Plans (HPTP) prior to all construction, or to carry out all necessary data recovery in advance of the Corps' approvals, permitting and construction.

For these reasons, unforeseen discoveries shall be treated pursuant to the provisions of 36 CFR 800.13 (Post-review discoveries).

**(C) Project Phasing and Potential Changes to the APE:** Because the improvements will occur in three phases (anticipated to be 2008, 2009, and 2010), it will be necessary to define the APE for each phase. The APE for each phase shall be submitted with the cultural resources inventory reports, and shall be consulted upon as part of that document, pursuant to **Stipulation IV**, below.

After the initial concurrence, changes to the APE may be necessary as SAFCA refines its phased Project plans. In particular, the ability of SAFCA to obtain access permissions of private landowners, determination of borrow sites and ongoing negotiations with resource agencies regarding species mitigation requirements may affect final Project's design, and may expand the current APE in some areas. Any changes to the APE shall be made in accordance with subsections D and E (below) of this Stipulation III. The SHPO, Corps, and SAFCA shall consult and reach concurrence in any changes to the APE. The final APE shall account for all Project development activities for the as-built Project. SAFCA shall notify the Corps of any change in the APE and the Corps shall determine the potential for Project development activities in a revised APE to affect cultural resources, through cultural resources inventory and testing as needed.

- (1) If there is the potential that cultural resources exist in the revised APE, SAFCA shall submit to the Corps:
  - (a) a map of the revised APE; and
  - (b) a description of Project development activities to take place in the revised APE; and
  - (c) a description of the inventory, nature, location, and known or potential significance of cultural resources in the revised APE; and
  - (d) a description of any archaeologically sensitive areas in the revised APE that require monitoring by an archaeologist, and Native American monitor as appropriate; and
  - (e) a plan for managing cultural resources in a manner that either avoids Project-related effects to cultural resources, or which mitigates any adverse effects, and which provides for the management of unforeseen cultural resources discoveries.
- (2) If no cultural resources are identified within a revised APE, SAFCA shall document such a determination, provide documentation to the Corps and keep such documentation on file at its principal offices.

After the Corps and SAFCA agree to a revised APE and if such a change has the potential to have an effect on cultural resources, the Corps shall submit the documentation to the SHPO for their review. The SHPO

shall have 30 calendar days from the date of receipt of the notice of a revision to the APE to review and to provide in writing either concurrence with or objection to the definition of the revised APE, and any proposed historic preservation activities. Should the SHPO not respond in writing within 30 calendar days, the Corps and SAFCA shall proceed as though the SHPO has concurred in the revised APE, and the proposed historic preservation activities, if any.

Should the SHPO object to the definition of the revised APE or proposed historic preservation activities, the Corps, SAFCA, and the SHPO shall consult for a period not to exceed 15 calendar days following the date of 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, the Corps, and SAFCA be unable to agree on the issues to which the SHPO has objected, the consulting parties to this Programmatic Agreement shall proceed in accordance with **Stipulation VIII (Resolving Objections)**, below.

**(D) Scope of Identification Efforts in the APE:** Inventories of Historic Properties within the established or revised APE shall be completed in accordance with **Stipulation IV (Inventory of Historic Properties)** of this Programmatic Agreement. Treatment of any adverse effects to Historic Properties within the established or revised APE shall be completed in accordance with **Stipulation V (Treatment of Effects)** of this Programmatic Agreement.

**(E) Scope of the APE:** For purposes of this Programmatic Agreement, a revised APE shall be defined to meet, at a minimum, the following criteria:

(1) The APE for any segment of the Natomas levees that are being improved as part of the Project and shall include the levee segment and a corridor extending not less than 75 feet from the land side toe of the levee segment. The APE also shall include:

- The extent of all Project construction and excavation activity required to construct flood control facilities and to modify irrigation and drainage infrastructure,
- The additional right-of-way/easements obtained by SAFCA as part of the Project's features,
- All areas used for excavation of borrow material and habitat creation, and
- All construction staging areas.

(2) The APE for Project activities shall include the direct footprint of the activity and a reasonable buffer determined by consultation between SAFCA and the Corps, according to the nature of the activity, SAFCA's ownership interest or easement, and the probability that ground-disturbing work may extend beyond the footprint of planned improvements and activities.

(3) The APE for any other type of Project development activities shall be defined by the Corps in consultation with the consulting parties.

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

**(A) Identification Efforts to Date and Further Work Required:** An inventory of Historic Properties within the APE has been initiated consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716-44740). The SAFCA shall submit a completed inventory and evaluation for each phase of Project work (2008, 2009, 2010) to the Corps. Such inventory shall be deemed complete by the Corps when the SHPO concurs in the NRHP eligibility recommendation for all cultural resources within the APE for that phase.

**Areas of Archaeological Sensitivity:** Areas of archaeological sensitivity will be monitored in accordance with HPTPs.

**(C) Changes in the APE:** If areas are added to the Project development activities subsequent to the SHPO concurrence on the map of the APE for a specific phase, SAFCA shall complete an inventory of Historic Properties within the expanded APE. Such inventory shall be undertaken and completed consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716–44740). Such inventory shall be deemed completed by the Corps at such time as the SHPO concurs in the NRHP eligibility of all cultural resources within the established and revised APE for the Project, pursuant to this Stipulation IV.

## V. TREATMENT OF EFFECTS

**(A) Historic Property Treatment Plans:** If Historic Properties are identified in cultural resources inventories that would be adversely affected by the Project, SAFCA shall prepare a Historic Properties Treatment Plan (HPTP) for review and written approval by the Corps and the SHPO for those specific properties. An HPTP applicable to every Historic Property that may sustain adverse effects by the Project shall be prepared, including for those Historic Properties found during construction. An HPTP may address individual or multiple Historic Properties. An HPTP shall stipulate those actions SAFCA shall take to resolve the adverse effects of the Project on Historic Properties. SAFCA shall ensure that all provisions of an HPTP are carried out in a timely manner. Any changes to an HPTP shall be reviewed and approved by the Corps. Copies of all reports pertaining to the treatment of Historic Properties shall be submitted to the consulting parties to this Programmatic Agreement. Reports and other data pertaining to the inventory of, and treatment of effects on, Historic Properties may be distributed to concurring parties to this Programmatic Agreement and to other members of the public consistent with **Stipulation VII (Confidentiality)** of this Programmatic Agreement. Individual HPTPs may be submitted simultaneously with the cultural resources inventory report for specific Project phases. If HPTPs are submitted simultaneously with an inventory report for a Project phase or with an addendum to such report for an expanded APE or Project description, the Corps and SHPO review period for such HPTP shall run concurrently with the review period for the inventory report.

**Review Schedule:** The SHPO and the Corps shall have 30 calendar days to review and comment upon in writing any HPTP submitted by SAFCA. The SHPO and the Corps shall indicate in their review that they find the HPTP either acceptable or not. In the event that comments are not made by the SHPO within 30 calendar days, the Corps shall assume the SHPO has accepted the HPTP as submitted. In the event the Corps and/or the SHPO provide written comment within the 30-day period, either SAFCA shall accept the comments and revise the HPTP accordingly, or SAFCA and the Corps may object to some or all comments. Comments from the Corps or the SHPO that are not acceptable to SAFCA shall be resolved by consultation among the Corps, the SHPO, and SAFCA for a period of not more than 15 calendar days. Should the Corps, the SHPO, and SAFCA be unable to resolve any dispute regarding the Corps or the SHPO comments, the consulting parties shall proceed in accordance with **Stipulation VIII (Resolving Objections)** of this Programmatic Agreement.

The Corps shall submit to the SHPO for review and comment any amendment, addendum, revision or other change to an HPTP. SAFCA shall proceed to make changes to an HPTP as per the procedure and schedule for the review and approval of an original HPTP. If a Historic Property is discovered within an expanded APE subsequent to an initial inventory effort for a phase, and the Corps and SAFCA agree that

the Project may adversely affect the property, SAFCA shall submit an addendum to the HPTP or a new HPTP. The review schedule for this submittal follows the provisions of Stipulation V.

**(B) Commencement of Construction and Project Work:** Project development activities may commence within the APE after a Historic Properties inventory has been completed (per **Stipulations III and IV**, above), and prior to treatment of adverse effects on Historic Properties within the APE provided that:

(1) A plan to respond to inadvertent archaeological discoveries is prepared by SAFCA and approved by the Corps prior to the commencement of Project activities anywhere in the APE for that phase of the Project; and

(2) Project development activities do not encroach within 30 meters (100 ft) of the known boundaries of any Historic Property as determined from archaeological site record forms, other documentation, or as otherwise defined in consultation with the SHPO; and

(3) An archaeological monitor is present during any Project activities that are anticipated to extend either vertically or horizontally into any areas designated to be archaeologically sensitive by SAFCA in consultation with the Corps.

**(C) Final Report Documenting Implementation of the Historic Properties Treatment Plan(s):** Within one year after the completion of all work performed as part of the Project SAFCA shall submit to the Corps and SHPO a final report documenting the results of all work prepared under the HPTPs. This report shall be submitted to the Corps and SHPO for review and comments, which SAFCA shall incorporate.

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

Members of the interested public shall be invited to consult regarding this Programmatic Agreement. Within 30 calendar days of the signing date of this Programmatic Agreement, the Corps, the SHPO, and SAFCA shall consult to compile a list of members of the interested public who shall be provided notice of this Programmatic Agreement. The opinions of local Native Americans with cultural ties to the APE and the opinions of other members of the public shall be taken into account by the consulting parties for historic preservation actions taken in accordance with this Programmatic Agreement. Native Americans and other members of the public may be invited to concur in this Programmatic Agreement. Native American monitor(s) shall be invited to assist SAFCA in the treatment of any Native American human remains and items associated with Native American burials discovered during the Project in accordance with California Public Resources Code Section 5097.98 and California Health and Safety Code Section 7050.5(b) and 7050.5(c).

## **VII. CONFIDENTIALITY**

Confidentiality regarding the nature and location of the archaeological sites and any other cultural resources discussed in this Programmatic Agreement shall be maintained on a "need-to know" basis limited to appropriate personnel and agents of SAFCA, the Corps, and the SHPO involved in planning, reviewing and implementing this Programmatic Agreement consistent with Section 304 of the NHPA.

## **VIII. RESOLVING OBJECTIONS**

**(A.)** Should any party to this Programmatic Agreement object to any action proposed or carried out

pursuant to this Programmatic Agreement, the Corps shall consult with the objecting party(ies) for a period of time not to exceed *30 calendar days* to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council shall either:

- (1) Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding the objection; or
- (2) Notify the Corps that the Council will comment in accordance with the requirements of Section 106 of the NHPA, and proceed to comment. Any Council comment provided in response shall be taken into account by the Corps, pursuant to the requirements of Section 106 of the NHPA.
- (3) Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, the Corps may assume the Council's concurrence in its proposed response to the objection.
- (4) The Corps shall take into account any Council recommendation or comment 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 Programmatic Agreement that are not the subjects of the objection shall remain unchanged.

**(B.)** At any time during implementation of the measures stipulated in this Programmatic Agreement should an objection pertaining to the Programmatic Agreement be raised by a member of the public, the Corps or SAFCA shall notify the consulting parties to the Programmatic Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the consulting parties to this Programmatic Agreement to address the objection.

## **IX. AMENDMENTS**

Any consulting party to this Programmatic Agreement may propose that the Programmatic Agreement be amended, whereupon the Corps shall consult with the other consulting parties to this Programmatic Agreement to consider such amendment. Any amendment shall be executed by the consulting parties in the same manner as the original Programmatic Agreement.

If the Project has not been completed within five years of the date of the execution of this Programmatic Agreement, the consulting parties shall consult on a date not less than 90 days prior to the fifth anniversary of this Programmatic Agreement to either amend this Programmatic Agreement and acknowledge its continued applicability for the undertaking for a designated period of time, or terminate this Programmatic Agreement and proceed to again consult regarding the undertaking in accordance with regulations implementing Section 106 of the NHPA.

All attachments to this Programmatic Agreement, and other instruments prepared pursuant to this agreement such as, but not limited to, the Project's description, initial cultural resource inventory report and maps of the APE, HPTPs, and monitoring and discovery plans may be amended without requiring amendment of this Programmatic Agreement. Such amendments will be consulted on by the concurring parties and shall be final when agreement is reached by the parties.

## **X. FAILURE TO CARRY OUT THE TERMS OF THE AGREEMENT**

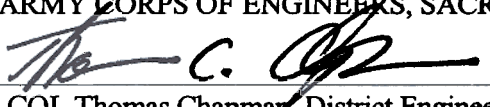
Should the Corps fail to ensure that the terms of this Programmatic Agreement are carried out, the Corps shall notify the parties to this Programmatic Agreement and again consult with the SHPO and the Council in accordance with regulations implementing Section 106 of the NHPA. The Corps shall not take any action or make any irreversible decision that would affect an Historic Property, preclude historic preservation alternatives, or foreclose any opportunities for the Council to comment on the undertaking prior to completion of the process for considering and resolving effects on Historic Properties provided in this document.

### XI. SCOPE OF THE PROGRAMMATIC AGREEMENT

Execution of this Programmatic Agreement by the Corps, the SHPO, and SAFCA, and implementation of its terms, evidence that Corps has afforded the Council an opportunity to comment on the undertaking for SAFCA Natomas Levee Improvement Program Landside Improvements Project, pursuant to 16 U.S.C. 470f, and that the Corps has taken into account the effects of the undertaking on Historic Properties. This Programmatic Agreement is limited in scope to the undertaking defined herein and is entered into solely for that purpose.

#### CONSULTING PARTIES:

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By:  Date: 10 Apr 08  
Title: COL Thomas Chapman, District Engineer, Sacramento District, U.S. Army Corps of Engineers

SACRAMENTO AREA FLOOD CONTROL AGENCY

By:  Date: 4/11/08  
Title: Stein M. Buer, Executive Director, Sacramento Area Flood Control Agency

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 5/1/08  
Title: Milford Wayne Donaldson, F.A.I.A., California State Historic Preservation Officer

**CONCUR:**

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

By: Jay S. Punia Date: 6/23/08  
Title: Jay S. Punia, Executive Officer, Central Valley Flood Protection Board

By: JAY S. PUNIA Date: 6/23/08  
Title: Executive Officer, CVFPB

**Attachment A: Project Description Summary**

**Attachment B: "Cultural Resources Inventory Reports, Part 1 – Natomas Levee Improvement Program  
Landside Improvements Project, Sacramento and Sutter Counties, California"  
(report).**

# **ATTACHMENT A**

## **Project Description Summary**