

**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS,
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
SAN FRANCISCO BAY TO STOCKTON, CALIFORNIA, NAVIGATION
IMPROVEMENT PROJECT**

WHEREAS, the U. S. Army Corps of Engineers, San Francisco District (USACE), is proceeding with a feasibility study for the San Francisco Bay to Stockton, California, Navigation Improvement Project as authorized by under the Rivers and Harbors Act of 1965, Pub. L. No. 89-298, § 309, 79 Stat. 1073, 1094; and

WHEREAS, the feasibility study is a General Reevaluation Report (GRR) to increase efficiency of existing tanker vessels; USACE proposes to study alternatives and measures that relate to improving navigation access to ports, harbors, refineries, and military terminals and reducing annual operations and maintenance (O&M) costs from San Francisco Bay through San Pablo and Suisun Bay; these improvements include, but are not limited to, the following measures: deepening of the existing Pinole Shoal and Bulls Head Reach Portion of the Suisun Bay navigation channels and side slopes, deepening the Bulls Head Reach Sediment Trap, and removal of a rock outcrop located west of Pinole Shoal; and

WHEREAS, the USACE has determined that the proposed improvements constitutes an Undertaking as defined in the Advisory Council on Historic Preservation Procedures, 36 C.F.R. § 800.16(y), that is subject to Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f, referred to hereinafter as “Section 106” or “NHPA”); and

WHEREAS, the USACE has consulted with the California State Historic Preservation Officer (SHPO) and determined the Area of Potential Effects (APE) to be located in San Pablo and Suisun Bays within Marin, Sonoma, Solano, Contra Costa and Sacramento Counties; the current APE for this project is considered to be a 0.25-mile buffer around project features including the existing federal navigation channels, the Bulls Head Reach sediment trap, and the underwater rock outcrop, the vertical APE is -40 feet mean lower low water (MLLW) (Attachment A); and

WHEREAS, the USACE previously conducted a cultural resource survey of a portion of the APE, which is documented in a *Report on a Nautical Archaeological Survey of 4 Areas in the John F. Baldwin Ship Channel* (Sullivan and Allen 2006); and

WHEREAS, at least one potential Historic Property was identified within the APE, consisting of a cluster of eight submerged targets that are collectively identified as the Baldwin Channel Wreck and are designated as P-07-002760 and P-21-000598; and

WHEREAS, historic research indicates that additional Historic Properties may be located within submerged portions of the APE and large areas of the APE have not been inventoried for

Historic Properties; and

WHEREAS, the USACE has determined that the Undertaking may have an effect on Historic Properties that are either included in, eligible for inclusion in, or are unevaluated for the National Register of Historic Places (NRHP); and

WHEREAS, the USACE cannot fully determine the effects of the Undertaking on Historic Properties prior to final approval of the Undertaking, requires a phased process to identify and evaluate Historic Properties, as provided for at 36 C.F.R. § 800.8(c)(1)(ii), and has decided to comply with Section 106 of the NHPA for the Undertaking through the execution and implementation of this Programmatic Agreement (Agreement), pursuant to 36 C.F.R. § 800.14(b)(1)(ii); and

WHEREAS, the USACE has consulted with the SHPO on the development of this Agreement for phasing the Section 106 process for the Undertaking; and

WHEREAS, this Agreement shall establish the process the USACE shall follow for compliance with Section 106, taking into consideration the views of the Signatory and Concurring Parties; and

WHEREAS, in accordance with 36 C.F.R. § 36 C.F.R. § 800.6(a)(1), through correspondence sent on December 10 2019, the USACE notified the Advisory Council on Historic Preservation (ACHP) of the development on this Agreement. Through correspondence dated December 20 2019, the ACHP does not believe their participation as an Invited Signatory to execute this Agreement is needed. If the ACHP receives a request for participation from the SHPO, Tribal Historic Preservation Officer (THPO), affected Indian tribe, a consulting party, or other party, the ACHP will reconsider this decision; and

WHEREAS, the Port of Stockton is the non-Federal Sponsor for the study, and has been invited to participate in this Agreement as a Concurring Party; and

WHEREAS, the Abandoned Shipwreck Act of 1987 (ASA), 43 U.S.C. 2101-06 (2018), transfers titles of abandoned shipwrecks on submerged lands to the state of California, and the California State Lands Commission (CSLC) is the custodian of those shipwrecks, the USACE has coordinated with the CSLC and their database to identify shipwrecks that are potentially within the project area and will continue to coordinate if further shipwrecks are identified; and

WHEREAS, the Amah Mutsun Tribal Band of Mission San Juan Bautista, Cloverdale Rancheria of Pomo Indians, Coastanoan Rumsen Carmel Tribe, Cortina Rancheria Kletsel Dehe Band of Wintun Indians, Dry Creek Rancheria Band of Pomo Indians, Federated Indian of Graton Rancheria, Indian Canyon Mutsun Band of Costanoan, Kashia Band of Pomo Indians of the Stewarts Point Ranchero, Lytton Rancheria, Middletown Rancheria, Mishewal-Wappo Tribe of Alexander Valley, Muwekma Ohlone Indian Tribe of the SF Bay Area, North Valley Yokuts Tribe, The Ohlone Indian Tribe, United Auburn Indian Community of the Auburn Rancheria, Wilton Rancheria, and Yocha Dehe Wintun Nation have been invited by the USACE, in accordance with 36 C.F.R. § 800.2(c)(2)(ii)(A) and 36 C.F.R. § 800.3(f)(2), to participate in the

Section 106 process for the Undertaking as Concurring Parties and will continue to be included throughout the implementation of the project; and

WHEREAS, the Wilton Rancheria has indicated a desire to participate in consultation on the project and the USACE has invited the Wilton Rancheria to be a Concurring Parties to this Agreement; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii), the USACE has notified the public of the Undertaking; held a public meeting on the Undertaking on June 11, 2019, and provided an opportunity for members of the public to comment on the Undertaking and the Section 106 process as outlined in this Agreement on November 15, 2019; and.

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

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

NOW, THEREFORE, the USACE and the SHPO agree that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on Historic Properties and to satisfy the USACE's Section 106 responsibilities for all individual aspects of the Undertaking.

STIPULATIONS

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

Stipulation I Time Frames and Review Procedures

A. For all documents and deliverables produced in accordance with the stipulations of this PA, including findings and effects determinations, USACE shall provide a draft document to the SHPO, Concurring Parties, and Indian tribes for review. Any written comments provided by the SHPO, Concurring Parties, and Indian tribes, within thirty (30) calendar days from the date of receipt, shall be considered in the revision of the document or deliverable. USACE shall document and report the written comments received for the document or deliverable and how comments were addressed. USACE shall provide a revised final document or deliverable to the SHPO, Concurring Parties, and Indian tribes. The SHPO, Concurring Parties, and Indian tribes shall have thirty (30) calendar days from receipt to respond. Failure of the SHPO, Concurring Parties, and Indian tribes to respond within thirty (30) calendar days of receipt of any submittal shall not preclude USACE from moving to the next step in this PA.

B. Should the SHPO object to the final document or deliverable submitted for review,

USACE and SHPO shall consult for a period not to exceed fifteen (15) calendar days or other agreed upon time period) following the receipt of the SHPO's written objection in an effort to come to agreement on the issues to which the SHPO has objected. Should the SHPO and USACE be unable to agree on the issues to which the SHPO has objected, the SHPO and USACE shall proceed in accordance with **Stipulation XII (Dispute Resolution)** below. The timeframe to consult to resolve a disagreement or objection may be extended by mutual consent of USACE and the SHPO.

Stipulation II Area of Potential Effects Definition

A. The USACE has determined and documented the Area of Potential Effects (APE) for the Undertaking in consultation with SHPO. The USACE will consult regarding any modifications to the APE with the SHPO, Concurring Parties, and Native American Consulting Parties per **Stipulation III (Tribal Involvement)**. Once the USACE has determined the modified APE, the USACE will provide it to SHPO for review and comment, per 36 C.F.R. § 800.4, in the time frames established in **Stipulation I (Time Frames and Review Procedures)**. Modifications of the APE may be made by mutual agreement of the Signatories without amending this Agreement. For the purposes of this PA, the APE includes the extent of all construction and dredging activity required to construct the project, additional right-of-way/easements for the project's features, all borrow sources, stockpiling and spoils areas, staging areas, and access routes and takes into account potential for direct and indirect effects to Historic Properties that could result from the Undertaking.

B. The APE is located on the Benicia and Mare Island 7.5 Minute USGS topographic quadrangles in Marin, Sonoma, Solano, Contra Costa, and Sacramento Counties. A map of the APE is in Appendix 3.

C. The USACE shall provide timely notice of any modifications with the dredging, right-of-way, and ancillary areas in accordance with **Stipulation I (Time Frames and Review Procedures)**.

Stipulation III Tribal Involvement

A. USACE will make a reasonable and good-faith effort to identify Native American properties of traditional religious and cultural importance. USACE will consult with federally-recognized Indian tribes as listed on the Federal recognized tribe list, 84 Fed. Reg. 1200 (Feb. 1, 2019) and California Native American Tribes on the contact list maintained by the Native American Heritage Commission (Tribes or Indian Tribes). USACE will ensure that consultation continues throughout the implementation of this PA.

B. In accordance with the guidance provided in National Register Bulletin 38 and Preservation Brief 36, USACE will seek comments from all Indian tribes in making determinations of NRHP eligibility for resources including Traditional Cultural Properties (TCPs) and Cultural Landscapes (as defined in Bulletin 38 and Preservation Brief 36). Review of

documentation shall be consistent with **Stipulation I (Timeframes and Review Procedures)**.

C. In consultation with Tribes, the USACE will develop appropriate methods to resolve adverse effects to Historic Properties and will prepare Historic Property Treatment Plans (HPTP) pursuant to **Stipulation VII (Preparation of Historic Property Treatment Plan)**, or as a requirement during construction activities when issuing Notices to Proceed pursuant to **Stipulation VIII (Notices To Proceed With Dredging)** in areas with potential for Historic Properties of traditional religious and cultural importance. Areas with potential for Historic Properties of traditional religious and cultural importance will be determined in consultation with Indian tribes and Native American interested parties.

D. Pursuant to 36 C.F.R. § 800.6(c)(2)-(3), the USACE shall consider requests by Tribes and interested parties to become Concurring Parties to this Agreement. In accordance with **Stipulation I (Timeframes and Review Procedures)**, Concurring Parties to this Agreement will receive documents produced under this Agreement, as appropriate.

E. USACE shall make a reasonable and good-faith effort to ensure that Indian tribes, acting as either Concurring Parties or those expressing interest in the project, will be invited to participate in the development and implementation of the terms of this PA, including, but not limited to, the identification of the APE, identification of potential Historic Properties, determinations of eligibility, findings of effect, and the resolution of adverse effects for those Historic Properties. Review periods shall be consistent with **Stipulation I (Timeframes and Review Procedures)** except in situations involving unanticipated discoveries and treatment, which shall follow the review schedules of **Stipulation IX (Post-Review Discovery)**. USACE shall ensure that all interested Native American reviewers shall receive copies of all final survey and evaluation reports.

F. Indian tribes may choose not to sign this PA as a Concurring Party. Indian tribes and individuals not acting as Concurring Parties to the PA will be contacted when USACE identifies potential interest in a specific action of the project. USACE will make a good faith effort to identify any Native American organizations and individuals with interest in the proposed treatment of Historic Properties. The identification effort may include contacting the Native American Heritage Commission (NAHC), using online databases, and using personal and professional knowledge. USACE will then contact each identified organization and individual by mail or email inviting them to consult. If interest from the contacted parties is received by USACE, USACE will proceed to consult in accordance with **Stipulation III (Tribal Involvement)**. Further consultation may also be carried out through either letters of notification, emails, public meetings, environmental assessments/environmental impact statements, site visits, and/or another method requested by a Tribe or Native American interested party. Failure of any contacted group to comment within thirty (30) calendar days shall not preclude USACE from proceeding with the project.

Stipulation IV Professional Qualifications

A. Professional Qualifications: All technical work required for historic preservation

activities implemented pursuant to this PA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of Interior's Professional Qualifications Standards for archeology or history, as appropriate (48 Fed. Reg. 44,739). "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery excavation or recordation of potential Historic Properties that is required under this PA. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated project consultants.

B. Historic Preservation Standards: Historic preservation activities carried out pursuant to this PA shall meet the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 Fed. Reg. 44,716-40), as well as standards and guidelines for historic preservation activities established by the SHPO. USACE shall ensure that all reports prepared pursuant to this PA will be provided to the Signatories, Concurring Parties, and Indian tribes and are distributed in accordance with **Stipulation I (Timeframes and Review Procedures)**, and meet published standards of the California Office of Historic Preservation, specifically, Preservation Planning Bulletin Number 4(a), "Archaeological Resources Management Reports (ARMR): Recommended Contents and Format" (December 1989).

C. Archeological Monitor Standards: Archeological monitoring activities required for exploratory, construction, or construction related ground disturbing activities implemented pursuant to this PA shall be carried out by a person meeting, at a minimum, the Secretary of Interior's Professional Qualifications Standards for prehistoric or historic archaeology, as appropriate (48 Fed. Reg. 44,739). "Archeological monitoring" here includes monitoring ground disturbing activities that have been determined by USACE to be occurring in areas potentially sensitive for Historic Properties or buried resources.

Stipulation V Identification and Evaluation

USACE shall complete the identification and evaluation of Historic Properties prior to proceeding with construction. If the Signatory Parties object to the USACE' identification and evaluation efforts and do not agree to proceed with the phase of the project, the USACE shall follow **Stipulation XII (Dispute Resolution)**.

A. Identification of Historic Properties: An inventory of properties within the APE, agreed to under **Stipulation II (Area of Potential Effects Definition)**, consistent with the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed. Reg. 44,716-40), will be initiated for the project, or for individual phases of the project, as construction details become available. Surveying and identifying shipwreck and submerged resources shall followed Part II.D of the Abandoned Shipwreck Act Guidelines (55 Fed. Reg. 50,116). Survey recordation shall include features, isolates, and re-recordation of previously recorded resources. Records and literature searches shall be considered complete and current for a period of three years after they are conducted unless, in the professional opinion of the USACE archaeologist, more frequent updates are required. The survey shall ensure that Historic Properties such as historical structures and buildings, historical shipwrecks, historical engineering features, landscapes, viewsheds, and traditional cultural properties (TCPs) with

significance to Native American communities, are recorded in addition to archaeological sites. Recordation of historic structures, buildings, objects, and sites shall be prepared using the California Department of Parks and Recreation (DPR) 523 Site Record forms.

B. Evaluation of Properties: After recordation on DPR 523 Site Record forms, all identified resources shall be evaluated for NHRP eligibility in accordance with **Stipulation IV (Professional Qualifications)**. Evaluation of shipwreck resources shall follow Part II.E (Documenting and Evaluating Shipwrecks) of the Abandoned Shipwreck Act Guidelines (55 Fed. Reg. 50,116). USACE shall submit a completed inventory and evaluation reports to the SHPO and Concurring Parties in accordance with **Stipulation I (Timeframes and Review Procedures)**.

1. If SHPO, any Concurring Parties, and/or Indian tribes disagree regarding eligibility and a dispute cannot be resolved using the dispute resolution process in **Stipulation XII (Dispute Resolution)**, the USACE shall notify all parties involved and seek a formal determination of eligibility through the Keeper of the National Register of Historic Places (Keeper). The Keeper's determination will be final in accordance with 36 C.F.R § 63.4.

Stipulation VI Determinations of Effect

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

The USACE shall apply the Criteria of Adverse Effect pursuant to 36 C.F.R. § 800.5(a)(1) to all Historic Properties within the APE that will be affected by the project. Determinations of effect shall be made in consultation with the SHPO and the Concurring Parties. If there are no effects to Historic Properties, USACE shall prepare and submit the finding of effect document in accordance with **Stipulation I (Timeframes and Review Procedures)** and then follow the provisions of **Stipulation VIII (Notices To Proceed With Dredging)**. If adverse effects will occur to Historic Properties, and SHPO and Concurring Parties agree to the finding of adverse effect, a Historic Property Treatment Plan (HPTP) will be developed in accordance with **Stipulation VII (Preparation of Historic Property Treatment Plan)**.

Stipulation VII Preparation of Historic Property Treatment Plan

If it is determined that project activities will result in adverse effects, USACE, in consultation with the SHPO, Concurring Parties, and Native American Consulting Parties, shall develop a Historic Properties Treatment Plan (HPTP) to resolve all adverse effects resulting from the project, which would be appended to this PA. The HPTP shall describe how the USACE intends to resolve adverse effects to Historic Properties, as well as any minimization measures that may be necessary to avoid adverse effects to Historic Properties as a result of the Undertaking. If adverse effects are identified, the HPTP shall be in effect before construction commences. The

HPTP may be amended and appended to this PA without amending the PA. USACE would submit the HPTP for review in accordance with **Stipulation I (Timeframes and Review Procedures)**.

A. Scope: The HPTP may address individual or multiple Historic Properties or Historic Property types. An HPTP will stipulate those actions the USACE will take to resolve the adverse effects of the project on Historic Properties within the project phase or specific action specified by the HPTP. For properties eligible under criteria specified in 36 C.F.R. § 60.4 (A) through (D), mitigation other than data recovery may be considered in the treatment plan (e.g., HABS/HAER, oral history, historic markers, exhibits, interpretive brochures or publications, or other means as deemed appropriate by the signatories). Additionally, the HPTP will abide by the Abandoned Shipwreck Act Guidelines, 55 Fed. Reg. 50,116 (December 4, 1990; ASA Guidelines) guiding federal agencies on how to effectively manage abandoned shipwrecks in submerged lands under their ownership or control. Appropriate measures for avoidance or minimization of effect to Historic Properties shall also be included, as needed. The HPTP shall include a Monitoring Plan to be implemented if it is determined that archaeological and/or tribal monitors are appropriate for the undertaking.

B. Review: USACE shall submit the Draft HPTP to the SHPO, Concurring Parties, and Native American Consulting Parties for review and comment pursuant to **Stipulation I (Time Frames and Review Procedures)**.

C. Reporting: Reports and other data pertaining to the treatment of effects to Historic Properties will be distributed to Concurring Parties to this PA, Indian tribes, and other members of the public, consistent with **Stipulation I (Timeframes and Review Procedures)** of this PA, unless parties have indicated through consultation that they do not want to receive a report or data.

D. Amendments/Addendums/Revisions: If a Historic Property that is not covered by the existing HPTP is discovered within the APE subsequent to the initial inventory effort, or if there are previously unexpected effects to a Historic Property, or if USACE and SHPO agree that a modification to the HPTP is necessary, USACE shall prepare an addendum to the HPTP. The USACE shall then submit the addendum to the SHPO, Concurring Parties, and Indian tribes for review and comment, and if necessary, shall follow the provisions of **Stipulation IX (Post-Review Discovery)**. The HPTP may cover multiple discoveries for the same property type.

D. Data Recovery: In consultation with the SHPO, tribes, and Concurring Parties, when data recovery is proposed, USACE shall ensure that specific Research Designs are developed consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999) and 36 C.F.R. 800.6(b), and submitted to SHPO and Concurring Parties pursuant to **Stipulation I (Timelines and Procedures)**.

E. Final Report Documenting Implementation of the Historic Properties Treatment Plan: Within one year after the completion of all work for the project, USACE shall submit to the

SHPO, Concurring Parties, and Indian tribes, a Final Report documenting the results of all work prepared under the HPTP, and the information learned from each of the Historic Properties. The submittal of the Final Report shall be in accordance with **Stipulation I (Timeframes and Review Procedures)**.

Stipulation VIII Notices To Proceed With Dredging

Notices to Proceed (NTP) may be issued by the USACE for individual dredging segments, defined by the USACE in its dredging specifications, under any of the following conditions:

- A. The USACE and SHPO have determined through consultation that there are no Historic Properties within the APE for a particular dredging segment; or
- B. The USACE, after consultation with the SHPO, concurring parties, and consulting parties has implemented an adequate Historic Property treatment plan for the dredging segment, and
 - (a) Any required fieldwork for the resolution of adverse effects has been completed; and
 - (b) The USACE has accepted a summary or report of the fieldwork performed and a reporting schedule for that work and SHPO has reviewed pursuant to **Stipulation I (Time Frames and Review Procedures)** and confirmed that the requirements of the HPTP have been met for that phase. These documents will be circulated pursuant to **Stipulation I (Time Frames and Review Procedures)**.

Stipulation IX Post-Review Discovery

A. The USACE is responsible for complying with 36 C.F.R. § 800.13 in the event of inadvertent discoveries of Historic Properties during implementation of the Project. If an HPTP has been prepared, the HPTP will provide specific procedures for complying with post review and inadvertent discoveries of Historic Properties. If an HPTP has not been prepared and there is a discovery of an unknown historic property, the USACE shall follow 36 C.F.R. § 800.13(b). Additionally, the following procedures shall be followed:

- 1. Workforce Training: During implementation of project activities, USACE personnel, archeologists meeting the professional qualifications as described in **Stipulation IV (Professional Qualifications)**, and/or Tribal members 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.
- 2. Human Remains: Treatment of human remains is governed by **Stipulation XII (Treatment of Human Remains)**.

Stipulation X Curation

If, in consultation with Concurring Parties and Indian Tribes, curation is determined to be appropriate mitigation to resolve adverse effects of this Undertaking, curation shall be conducted in accordance with 36 C.F.R. pt. 79, except those materials identified as Native American human remains and items associated with Native American burials. Archeological items and materials from State or privately owned lands shall be maintained in accordance with 36 C.F.R. pt. 79 until any specified analyses are complete. This agreement incorporates by reference the definitions for “human remains” and “funerary objects” set forth in 43 C.F.R. § 10.2(d) and those definitions shall apply to actions under this Agreement.

Stipulation XI Treatment of Human Remains

In cases when human remains are discovered on non-federally owned property within the designated APE, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-13 (2018), would not apply. USACE and the landowner shall ensure that human remains and any items associated with the remains encountered during the project 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. If Native American human remains are encountered within the context of a National Register eligible or potentially eligible archaeological site, a clear means of identifying those remains and associated funerary objects will be described in the HPTP. Any procedures described in the HPTP regarding the handling or treatment of human remains will be coordinated with the landowner to ensure that they are consistent with Public Resources Code 5097.98. In the event that any Native American human remains or associated funerary items are identified, the Most Likely Descendant (MLD), as identified by the Native American Heritage Commission, shall be invited to advise the landowner in the treatment of any Native American human remains and items associated with Native American burials.

Stipulation XII Dispute Resolution

- A. Should any Signatory or Concurring Party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the USACE shall notify the other parties to the PA and consult with the objecting party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE will:
 - 1. Forward all documentation relevant to the dispute, including the USACE’ proposed resolution, to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute

from the ACHP, Signatories and Concurring Parties, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Concurring Parties to the PA, and provide them and the ACHP with a copy of such written response
3. The USACE' responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

Stipulation XIII Annual Reporting

USACE shall provide the parties to this PA an annual summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in USACE's efforts to carry out the terms of this PA. USACE will provide the initial annual summary report on or before December 31, 2020, and provide subsequent reports on or before December 31 each year following until the PA expires or is terminated. Review of the annual summary report shall follow the procedure outlined in **Stipulation I (Time Frames and Review Procedures)**. At the request of any Signatory or Concurring Party to this PA, or if otherwise deemed necessary, the USACE shall ensure that one or more meetings are held to facilitate review, address questions, or resolve comments.

Stipulation XIV Notices

- A. All notices, demands, requests, consents, approvals or communications from all parties to this Agreement to other parties to this Agreement shall be personally delivered, sent by United States physical mail or digitally through e-mail. If physical mail is chosen as a form of notice, a receipt of the materials five (5) calendar days after deposit in the United States mail will be certified with postage prepaid along with a return receipt if requested.
- B. Signatory and Concurring Parties agree to accept facsimiles or copies of signed documents and agree to rely upon such facsimiles or copies as if they bore original signatures.

Stipulation XV Amendments, Noncompliance, and Termination

- A. Amendment: Any Signatory Party to this Agreement may propose that the Agreement be amended, including to extending the duration of the Agreement, whereupon the USACE shall consult with the Signatories for thirty (30) days to consider such amendment. The Agreement may be amended only upon written concurrence of all Signatories.

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

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

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

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

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

Stipulation XVI Duration of the PA

A. If the project has not been implemented within five (5) years of the date of execution of the PA, the PA shall automatically expire and have no further force or effect at the end of this five (5) year period unless it is amended or terminated prior to that time. If the PA has not been terminated, the signatories shall consult on a date not less than 90 days prior to the tenth anniversary of this PA to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment, or allowing the PA to expire. If the PA is terminated because the Undertaking no longer meets the definition of an "Undertaking" set forth in 36 C.F.R. § 800.16(y) and pursuant to **Stipulation XVI (Amendments, Noncompliance, and Termination)**.

B. This PA will be in effect through USACE's implementation of the Undertaking, and will terminate and have no further force or effect when the USACE, in consultation with the other signatories, determines that the terms of this PA have been fulfilled in a satisfactory manner

and/or USACE involvement in the project has ended. The USACE will provide the other signatories with written notice of its determination and of termination of this PA.

Stipulation XVII
Effective Date

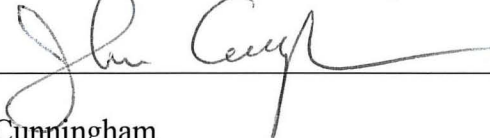
This PA shall take effect on the date that it has been fully executed by USACE, and the SHPO.

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

**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS,
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
THE SAN FRANCISCO BAY TO STOCKTON, CALIFORNIA, NAVIGATION
IMPROVEMENT PROJECT**

SIGNATORIES TO THIS AGREEMENT:

U.S. ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT

BY:  DATE: 2/7/2020

John D. Cunningham
Lieutenant Colonel, U.S. Army
District Commander and Engineer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY:  DATE: 2/14/20

for
Julianne Polanco
California State Historic Preservation Officer

CONCURRING PARTIES TO THIS AGREEMENT:
WILTON RANCHERIA

BY: _____ DATE: _____

ATTACHMENT A: SAN FRANCISCO BAY TO STOCKTON AREA OF POTENTIAL EFFECTS MAP



ATTACHMENT B: HISTORIC PROPERTY TREATMENT PLAN

Reserved for future use.

**(Refer to Stipulation VII
Preparation of Historic Property Treatment Plan for more information)**