



**US Army Corps
of Engineers** ®
San Francisco District

**PAJARO RIVER FLOOD RISK MANAGEMENT PROJECT
SANTA CRUZ AND MONTEREY COUNTIES
CALIFORNIA**



**CULTURAL RESOURCES
APPENDIX I OCTOBER 2018**

Appendix I

National Historic Preservation Act

- Revised Draft Programmatic Agreement (PA)
- Correspondence

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE PAJARO RIVER FLOOD RISK MANAGEMENT PROJECT, MONTEREY
AND SANTA CRUZ COUNTIES, CALIFORNIA**

WHEREAS, The Pajaro River Flood Risk Management Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (Corps). The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990); and

WHEREAS, The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries; and

WHEREAS Santa Cruz and Monterey Counties are the non-Federal Sponsor for the study and have been invited to be Concurring Parties to this Programmatic Agreement (Agreement); and

WHEREAS, the Corps has determined that the Study, and any subsequent associated project activities (Project), constitute an Undertaking, as defined in 36 C.F.R. § 800.16(y), and therefore is subject to Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. § 306108 (NHPA); and

WHEREAS, the Corps has determined that the Project may have an effect on properties that are either listed or eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the California State Historic Preservation Officer (SHPO) pursuant to the NHPA; and

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

WHEREAS, at least five (5) cultural resources are known to be present within the Area of Potential Effects (APE), two of which are National Register eligible, and large portions of the APE have not been inventoried; and

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

WHEREAS, in accordance with 36 C.F.R. §§ 800.2(c)(2)(ii)(A), 800.3(f)(2), and

800.14(b)(2)(i), the Corps has contacted federal and state recognized Native American Tribes, via letter(s), phone call(s), email(s), and meetings, to invite them to consult on the Project and this Agreement, including the Esselen Tribe of Monterey County, the Amah Mutsun Tribal Band of Mission San Juan Bautista, the Coastanoan Rumsen Carmel Tribe, the Costanoan Ohlone Rumsen-Mutsen Tribe, the Salinan Tribe of Monterey and San Luis Obispo Counties, the Xolon-Salinan Tribe, Ohlone/Coastanoan-Esselen Nation, Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, the Amah Mutsun Tribal Band, and the Indian Canyon Mutsun Band of Costanoan; the Corps has invited them (and others who may be identified in the future as appropriate Concurring Parties) to participate as Consulting Parties to this Agreement; and the Corps will continue consultation throughout the duration of this agreement; and

WHEREAS, as of October 12, 2018, the Esselen Tribe of Monterey County, the Ohlone/Costanoan-Esselen Nation, and the Amah Mutsun Tribal Band have indicated a desire to participate in consultation on the Project and Agreement; and

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

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

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps notified and invited the Advisory Council on Historic Preservation (ACHP) per 36 C.F.R. § 800.6(a)(1)(C) to participate in consultation to resolve potential adverse effects of the Project, including development of this Agreement, pursuant to 36 C.F.R. § 800.6(a)(1)(iii), in a letter dated 18 October 2017, and in a letter dated 8 November 2018 the AHCP declined to participate in consultation on the resolution of adverse effects; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii), the Corps conducted a public meeting on the integrated Draft General Reevaluation Report and Environmental Assessment on November 8, 2017, at the Watsonville Civic Plaza Community Room, 275 Main Street, 4th Floor, Watsonville, California 95076-5133 and has notified the public of the Project and provided an opportunity for members of the public to comment on the Project and the Section 106 process as outlined in this Agreement; and

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

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

STIPULATIONS

I. TIME FRAMES AND REVIEW PROCEDURES

- A. **Document and Deliverable Review:** For all documents and deliverables produced in accordance with the stipulations of this Agreement, the Corps shall provide a draft document to the SHPO, Concurring Parties, Native American interested parties, and Tribes for review. Any written comments provided by the SHPO, Concurring Parties, and Native American interested parties, and Tribes, within thirty (30) calendar days from the date of receipt, shall be considered in the revision of the document or deliverable. The Corps shall document and report the written comments received for the document or deliverable and how comments were addressed. The Corps shall provide a revised final document or deliverable to the SHPO and concurring parties for concurrence. The SHPO shall have thirty (30) calendar days to respond. Failure of the SHPO, Concurring Parties, and Native American interested parties and Tribes to respond within thirty (30) calendar days of receipt of any submittal shall not preclude the Corps from moving to the next step in this Agreement.
- B. Should the SHPO, Native American interested parties, or Tribes object to the Corps' findings of NRHP eligibility and/or findings of effect within the final document or deliverable submitted for concurrence, the Corps, SHPO, Native American interested parties, and Tribes shall consult for a period not to exceed fifteen (15) Calendar days following the receipt of the SHPO's, other Native American interested parties', and Tribe's written objection in an effort to come to agreement on the issues to which the SHPO, other interested party, or Tribe has objected. Should the SHPO and the Corps be unable to agree on the issues to which the SHPO has objected, the SHPO and the Corps shall proceed in accordance with **Stipulation XIII (Dispute Resolution)**, below. The timeframe to consult to resolve a disagreement or objection may be extended by mutual consent of the Corps and the SHPO.

II. AREA OF POTENTIAL EFFECTS

Attachment 1 includes an overall APE map for the Project. It will be necessary to further refine the APE as design and construction proceed. Prior to activities under **Stipulation III (Identification and Evaluation)**, the Corps shall submit to the SHPO, Concurring Parties, and Native American interested parties and Tribes a map of the APE, and a description of the Project activities that would occur within it, in accordance with **Stipulation I (Timeframes and Review Procedures)**.

A. The refined APE shall include:

- (1) The extent of all Project construction and excavation activity required to improve existing or build new levees and flood walls; and
- (2) The additional right-of-way/easements obtained by the Corps as part of the Project's features; and

- (3) All areas used for excavation of borrow material and habitat creation; and
 - (4) All construction staging areas, access routes, spoil areas, and stockpiling areas, and
 - (5) Boundaries of all identified historic properties that have a potential to be affected by the Project.
 - (6) Any areas where indirect effects to historic properties may be reasonably anticipated.
- B.** After the APE has been refined and consulted on in accordance with **Stipulation II (Area of Potential Effects)**, construction or other Project activities may require revisions to the APE. If the APE is revised, the Corps shall consult on that revision in accordance with **Stipulation I (Timeframes and Review Procedures)**, and the Corps shall determine the potential for Project activities in a revised APE to affect potential Historic Properties, in accordance with **Stipulation III (Identification and Evaluation)**. Revisions to the APE shall not necessitate modifications to this Agreement.

III. IDENTIFICATION AND EVALUATION

The Corps shall complete any identification and evaluation, and as necessary, any resolution of effects to Historic Properties prior to proceeding with construction. If the Signatory Parties object to the Corps' identification and evaluation efforts and do not agree to proceed with the phase of the Project the Corps shall follow **Stipulation XIII (Dispute Resolution)**.

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

The Corps shall conduct a current records and literature search at the Northwest Information Center, Sonoma State University, Rohnert Park for Monterey County and at the Central Coast Information Center, University of California, Santa Barbara, for San Luis Obispo County prior to conducting archaeological surveys of the APE. 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 Corps archaeologist, more frequent updates are required.

Survey recordation shall include features, isolates, and re-recordation of previously recorded sites, as necessary. The survey shall ensure that potential Historic Properties such as historical structures, buildings, and objects, historical engineering features, landscapes, and viewsheds 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.

In consultation with Native American Tribes and interested parties, the Corps will make a reasonable effort to identify historic properties with religious and cultural significance to Native American communities following **Stipulation X (A) (Tribal Involvement)**. The Corps will also seek comments from interested Native American interested parties and Tribes in making determination of NRHP eligibility following **Stipulation X (B) (Tribal Involvement)**.

The inventory work shall contain a geoarchaeological assessment to be included with the inventory report of the potential that subsurface archaeological resources may exist in the APE, and an appropriate effort to find and identify such resources.

- B. Property Types Exempt from Evaluation:** By agreement of the Signatories and through consultation between the Corps and SHPO, various property or feature types shall be exempt from evaluation. **Attachment 2** to this Agreement lists the property types that shall be exempt from evaluation.
- C. Evaluation of Potential Historic Properties:** After recordation on DPR 523 Site Record forms, all potential Historic Properties shall be evaluated by a qualified professional for their eligibility for listing in the NRHP consistent with the *Secretary of Interior's Standards for Evaluation*, 36 C.F.R. § 60.4. In accordance with **Stipulation I (Timeframes and Review Procedures)**, the Corps shall submit a completed inventory and evaluation for each phase of Project work.

IV. DETERMINATION OF EFFECTS

Avoidance of adverse effects to Historic Properties is the preferred treatment approach in companion to mitigation. The Corps 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 Corps will apply the criteria of adverse effect, pursuant to 36 C.F.R. § 800.5(a)(1), to all Historic Properties within the APE that will be affected by the Project. The Corps shall submit determinations of effects in accordance with **Stipulation I (Timeframes and Review Procedures)**.

V. HISTORIC PROPERTIES TREATMENT PLAN

If adverse effects are found, the Corps, in consultation with the SHPO, Concurring Parties, and Native American interested parties, and Tribes, shall develop a Historic Property Treatment Plan (HPTP), which would be appended to this agreement. The HPTP would outline the measures necessary to resolve adverse effects to Historic Properties. Development of appropriate measures shall include consideration of Historic Property types and provisions for avoidance or protection of Historic Properties where possible.

The HPTP may be amended and appended to this Agreement without amending the Agreement. If adverse effects are found, the HPTP would be developed and implemented before construction commences.

- A. Review:** The Corps shall submit the Draft HPTP to the SHPO, Concurring Parties, and Native American interested parties, and Tribes for review and comment pursuant to **Stipulation I (Timeframes and Review Procedures)**.
- B. Reporting:** Reports and other data pertaining to the inventory of Historic Properties and the treatment of effects to Historic Properties will be distributed to Concurring Parties to this Agreement, Native American Tribes, and other members of the public, consistent with **Stipulation XII (Confidentiality)** of this Agreement, unless parties have indicated through consultation that they do not want to receive a report or data.
- C. Amendments/Addendums/Revisions:** If an Historic Property type that is not covered by the existing HPTP is discovered within the APE subsequent to an initial inventory effort for a phase, or if the Corps and SHPO agree that another modification to the HPTP is necessary, the Corps shall submit an addendum to the HPTP to the SHPO and Concurring Parties for review and comment according to the guidelines laid out in **Stipulation I (Timeframes and Review Procedures)**, and if necessary, shall follow the provisions of **Stipulation VIII (Discovery of Unknown Historic Properties)**. A single HPTP may cover multiple discoveries for the same property type as agreed upon by the Corps and SHPO.
- D. Data Recovery:** Data recovery is not always the appropriate method of resolving adverse effects for archaeological sites. Appropriate treatment will be decided in consultation with the consulting parties and signatories to this Agreement. When data recovery is proposed, the Corps, in consultation with the SHPO and interested Native American Tribes, 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).
- E. Final Phase Report Documenting Implementation of the Historic Properties Treatment Plan:** Within one year after the completion of all work conducted to resolve adverse effects for that phase under the HPTP, the Corps shall submit to the SHPO, Concurring Parties, Native American interested parties, and Tribes, a Final Phase Report documenting the results of all work prepared for that phase under the HPTP, and the information learned from each of the Historic Properties. The submittal of the Final Phase Report shall be in accordance with **Stipulation I (Timeframes and Review Procedures)**.

VI. QUALIFICATIONS

- A. Professional Qualifications:** All technical work required for historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for 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 of potential Historic Properties that is required under this Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO or associated Project consultants.
- B. Historic Preservation Standards:** Historic preservation activities carried out pursuant to this Agreement shall meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716- 44740), as well as standards and guidelines for historic preservation activities established by the SHPO. The Corps shall ensure that all reports prepared pursuant to this Agreement will be provided to the Signatories, Concurring Parties, and Native American interested parties and Tribes and are distributed in accordance with **Stipulation XII (Confidentiality)**, and meet published standards of the California Office of Historic Preservation, specifically, *Preservation Planning Bulletin* Number 4(a), "Archaeological Resources Management Reports: Recommended Contents and Format" (December 1989).
- C. Archaeological Monitor Standards:** Archaeological monitoring activities required for exploratory, construction, or construction related ground disturbing activities implemented pursuant to this Agreement shall be carried out by a person meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for prehistoric or historic archaeology, as appropriate (48 FR 44739). "Archaeological monitoring" here includes monitoring ground disturbing activities that have been determined by the Corps to be occurring in areas potentially sensitive for Historic Properties or buried resources.

VII. NOTICES TO PROCEED WITH CONSTRUCTION

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

- A.** A plan to respond to inadvertent archaeological discoveries is prepared by the Corps, and approved by SHPO, prior to the commencement of Project activities anywhere in the APE for that phase of the Project; and
- B.** Project development activities do not encroach within 30 meters (100 feet) of the known boundaries of any Historic Property as determined from archaeological site record forms, other documentation, or as otherwise defined in consultation with

the SHPO and other parties, unless provided for in the HPTP; and

- C. An archaeological monitor meeting the professional qualifications as described in **Stipulation VI (Qualifications)**, is present during any Project activities that are anticipated to extend either vertically or horizontally into any areas designated to be archaeologically sensitive by the Corps, in consultation with SHPO, except in phases of construction where visual inspection of the construction area cannot be safely or feasibly accomplished.

VIII. DISCOVERY OF UNKNOWN HISTORIC PROPERTIES

The Corps is responsible for complying with 36 C.F.R. § 800.13(a) in the event of inadvertent discoveries of Historic Properties during implementation of the Project. 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 Corps shall follow 36 C.F.R. § 800.13(b). Additionally, the following procedures shall be followed:

- A. **Workforce Training:** During implementation of Project activities, the Corps, or archaeologists meeting the professional qualifications as described in **Stipulation VI (Qualifications)**, will provide training to all construction personnel before they begin work, regarding proper procedures and conduct in the event that archaeological materials are encountered during construction.
- B. **Human Remains:** In cases when human remains are discovered on non-federally owned property within the designated APE, NAGPRA would not apply. The landowner shall ensure that Native American human remains and grave goods encountered during the Undertaking that are located on state or private land are treated in accordance with the requirements in California State Health and Safety Code, Section 7050.5 and Public Resources Code 5097.98. If Native American human remains are encountered within the context of a National Register eligible archaeological site, a clear means of identifying those remains and grave goods 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.

IX. CURATION

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

treatment of human remains is addressed in **Stipulation VIII.B. (Discovery of Unknown Historic Properties, Human Remains)**.

X. TRIBAL INVOLVEMENT

- A.** In consultation with Native American interested parties and Tribes, the Corps will make a reasonable and good-faith effort to identify Historic Properties of traditional religious and cultural importance. The Corps shall ensure that consultation with Native American Tribes is initiated early with respect to the Project and continues throughout the Section 106 process.
- B.** In accordance with the guidance provided in National Register Bulletin 38 and Preservation Brief 36, the Corps will seek comments from all potentially interested Native American interested parties and Tribes in making determinations of NRHP eligibility for any Traditional Cultural Properties (TCPs) and Cultural Landscapes (as defined in Bulletin 38 and Preservation Brief 36). Review of documentation shall be consistent with **Stipulation I (Timeframes and Review Procedures)**.
- C.** Pursuant to 36 C.F.R. § 800.6(c)(2)-(3), the Corps shall consider requests by Native American Tribes to become Concurring Parties to this Agreement. In accordance with **Stipulation XII (Confidentiality)**, Concurring Parties to this Agreement will receive documents produced under this Agreement, as appropriate.
- D.** Native American Tribes may choose not to sign this Agreement as a Concurring Party. Native American Tribes and individuals not acting as Concurring Parties to the Agreement will be contacted when the Corps identifies potential interest in a specific phase or action of the project. The Corps 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. The Corps will then contact each identified organization and individual by mail or email inviting them to consult about the specific Historic Properties. If interest from the contacted parties is received by the Corps, the Corps will proceed to consult in accordance with **Stipulation X.A. (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 Native American interested party and Tribe. Failure of any contacted group to comment within thirty (30) calendar days from the date of notification shall not preclude the Corps from proceeding with the Project.
- E.** The Corps shall make a reasonable and good-faith effort to ensure that Native American 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 Agreement, including, but not limited to, the identification of the APE, identification of potential Historic Properties, determinations of eligibility,

findings of effect, and the resolution of adverse effect for those Historic Properties. Review periods shall be consistent with **Stipulation I (Timeframes and Review Procedures)** except in situations involving unanticipated discoveries and treatment, which shall follow the review schedules of **Stipulation VIII (Discovery of Unknown Historic Properties)**. The Corps shall ensure that all interested Native American reviewers receive copies of all final survey and evaluation reports.

XI. PUBLIC CONSULTATION AND PUBLIC NOTICE

- A.** Pursuant to 36 C.F.R. § 800.6(c)(2)-(3), the Corps will consider requests by interested parties to become Concurring Parties to this Agreement. Within thirty (30) calendar days of the effective date of this Agreement, the Corps shall consult with the SHPO to compile a list of members of the interested public who shall be provided notice of this Agreement.
- B.** The interested public will be invited to provide input on the identification, evaluation, and proposed treatment of Historic Properties. This may be carried out through either letters of notification, public meetings, environmental assessment/environmental impact statements, and/or site visits. The Corps shall ensure that any comments received from members of the public are taken under consideration and incorporated where appropriate. Review periods shall be consistent with **Stipulation I (Timeframes and Review Procedures)**. In seeking input from the interested public, locations of Historic Properties will be handled in accordance with **Stipulation XII (Confidentiality)**. In cases where the release of location information may cause harm to the Historic Property, this information will be withheld from the public in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).

XII. CONFIDENTIALITY

Confidentiality regarding the nature and location of the archaeological sites and any other cultural resources discussed in this Agreement shall be limited to appropriate Corps personnel, Corps contractors, Native American tribes, the SHPO, and those parties involved in planning, reviewing and implementing this Agreement in accordance with Section 304 of the NHPA (54 U.S.C. § 307103), and implementing regulations under 36 CFR § 800.6(a)(5) and 36 CFR § 800.11(c); Section 9 of the Archaeological Resources Protection Act (10 U.S.C. §§ 470aa – 470mm); Freedom of Information Act (FOIA); Executive Order on Sacred Sites 13007 FR 61-104 dated May 24, 1996; and California Government Code Section 6250-6270, as applicable.

XIII. DISPUTE RESOLUTION

- A.** Should any Signatory Party to this Agreement object in writing to any action proposed or carried out pursuant to this Agreement, the Corps will immediately notify the SHPO and the Concurring Parties of the objection and proceed to consult with the objecting party for a period of time, not to exceed thirty (30) calendar days, to resolve the objection. If the objection is resolved through

consultation, the Corps may authorize the disputed action to proceed in accordance with the terms of such resolution. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the ACHP and notify Signatories and concurring parties of this decision. Within forty-five (45) calendar days after receipt of all pertinent documentation, the ACHP shall 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 shall 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 shall be considered by the Corps, pursuant to the requirements of Section 106 of the NHPA.
- B.** Should the ACHP not exercise one of the options under **Stipulation XIII.A. (Dispute Resolution)** within forty-five (45) calendar days after receipt of all submitted pertinent documentation, the Corps may move forward with implementation of the proposed response to the objection.
- C.** The Corps shall consider any ACHP recommendation or comment and any comments from the SHPO to this Agreement provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
- D.** The Corps shall provide the SHPO and concurring parties with a written copy of its final decision regarding any objection addressed pursuant to **Stipulation XIII.A. (Dispute Resolution)**.

At any time during implementation of the measures stipulated in this Agreement should an objection pertaining to the Agreement be raised by a Concurring Party, Native American Tribe, or a member of the public, the Corps shall notify the Signatory and Concurring Parties and take the objection under consideration, consulting with the objecting party and, should the objecting party request, any of the Signatory and Concurring Parties to this Agreement, for no longer than fifteen (15) calendar days. The Corps shall consider the objection, and in reaching its decision, will consider all comments provided by the other parties. Within fifteen (15) calendar days following closure of the comment period, the Corps will render a decision regarding the objection and respond to the objecting party. The Corps will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. The Corps' decision regarding resolution of the objection will be final. Following issuance of its final decision, the Corps may authorize the action that was the subject of the dispute to proceed in accordance

with the terms of that decision. The Corps' responsibility to carry out all other actions under this Agreement shall remain unchanged.

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 Mail, or emailed, and all parties shall be considered in receipt of the materials five (5) calendar days after deposit in the United States mail, certified and postage prepaid, return receipt requested.
- B.** Signatory and Concurring Parties agree to accept facsimiles or copies of signed documents and agree to rely upon such facsimiles or copies as if they bore original signatures.

XV. AMENDMENTS, NONCOMPLIANCE, AND TERMINATION

- A. Amendment:** Any Signatory Party to this Agreement may propose that the Agreement be amended, whereupon the Corps shall consult with the SHPO 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 HPTPs, 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 X (Tribal Involvement)** and **Stipulation XI (Public Consultation and Public Notice)**, 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 HPTPs, and monitoring and discovery plans, as appropriate, and copies of any amendment(s) to the Agreement.

- B. Termination:** Only the Signatories may terminate this Agreement. If this Agreement is not amended as provided for in **Stipulation XV.A. (Amendment)**, or if any Signatory proposes termination of this Agreement for other reasons, the Signatory proposing termination shall notify the other Signatory in writing, explain the reasons for proposing termination, and consult with the other Signatory to seek alternatives to termination, within thirty (30) calendar days of 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, the Corps shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.

- C. Duration:** This Agreement shall remain in effect for a period of five (5) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this five-year period unless it is amended or terminated prior to that time. No later than ninety (90) calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

XVI. ANNUAL REPORTING

At the end of every calendar year following the execution of this Agreement, the Corps shall provide all parties to this Agreement a summary report detailing work carried out pursuant to its terms, if any. Such report shall describe progress made implementing the terms of the Agreement as well as include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Corps' efforts to carry out the terms of this Agreement. Any Signatory party may request to meet with the other Signatories to discuss implementation of this Agreement. Review of annual report will be pursuant to **Stipulation I (Timeframes and Review Procedures)**.

XVII. EFFECTIVE DATE

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

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

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S.ARMY CORPS OF ENGINEERS AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING
THE PAJARO RIVER FLOOD RISK MANAGEMENT PROJECT, MONTEREY
AND SANTA CRUZ COUNTIES, CALIFORNIA**

SIGNATORIES TO THIS AGREEMENT:

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

BY: _____ DATE : _____
Travis J. Rayfield, Lieutenant Colonel, USACE, District Engineer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____
Julianne Polanco, State Historic Preservation Officer

CONCURRING PARTIES TO THIS AGREEMENT :

MONTEREY COUNTY, CALIFORNIA

BY : _____ DATE : _____
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

SANTA CRUZ COUNTY, CALIFORNIA

BY : _____ DATE : _____
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

AMAH MUTSUN TRIBAL BAND

BY : _____ DATE : _____
Valentin Lopez, Chairperson

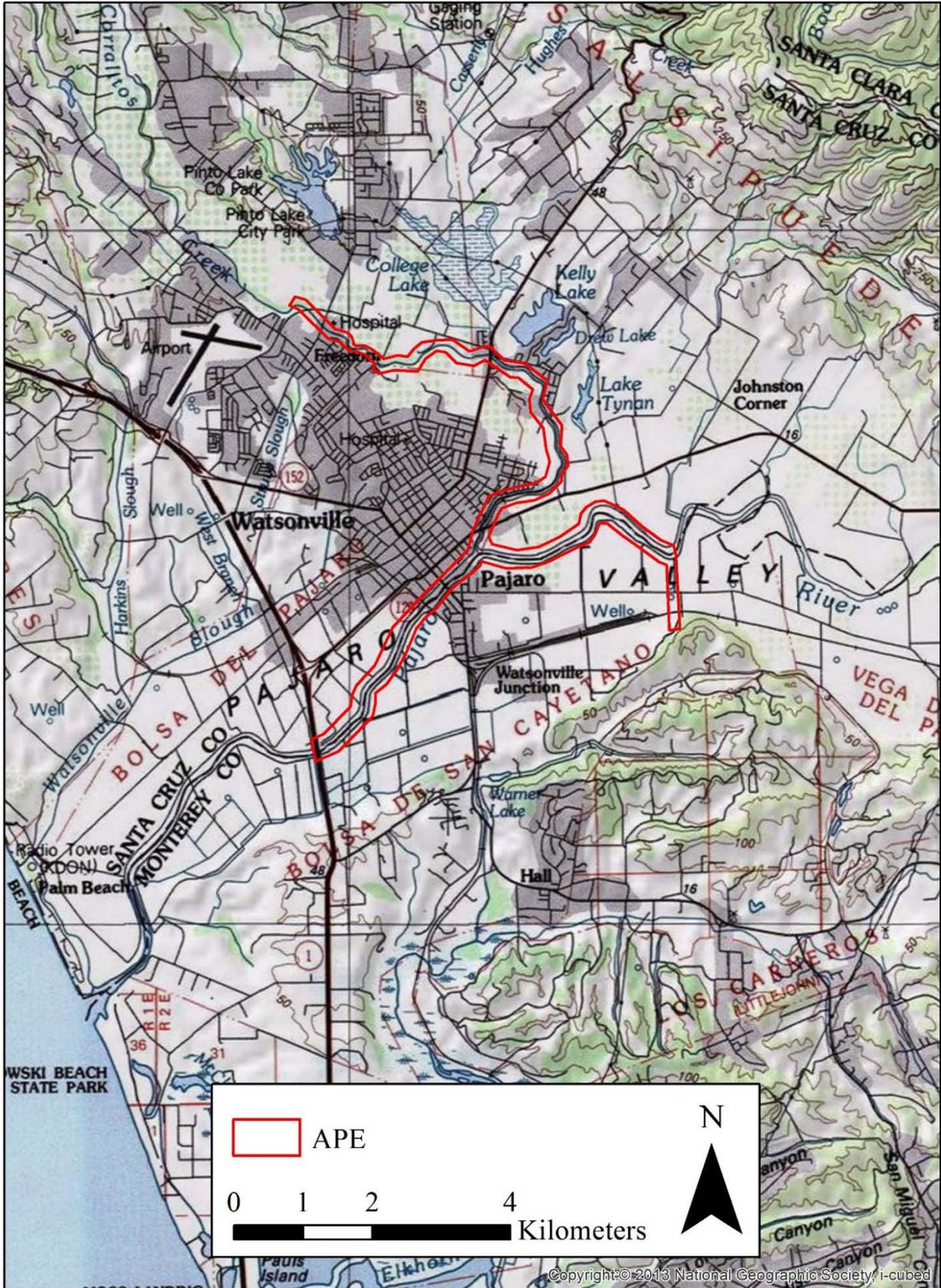
ESSELEN TRIBE OF MONTEREY COUNTY

BY : _____ DATE : _____
Tom Little Bear Nason, Acting Tribal Chairperson

OHLONE/COSTANOAN-ESSELEN NATION

BY : _____ DATE : _____
Louise J. Miranda Ramirez, Chairperson

DRAFT



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Attachment 1. Map of APE.

Attachment 2

Property Types Exempt from Evaluation

DRAFT

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

Exempt Property Type 1: Archaeological Property Types and Features

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

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

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

Water Conveyance and Control Features

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

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

Recent Transportation or Pedestrian Facilities

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

Highway and Roadside Features

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

Adjacent Features

- Fences, walls, gates, and gateposts

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

Movable or Minor Objects

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

NATIVE AMERICAN HERITAGE COMMISSION

1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
(916) 373-3710
Fax (916) 373-5471



October 10, 2017

Patrick O'Day
US Army Corps of Engineers

Sent by: Patrick.m.o'day@usace.army.mil

RE: Pajaro River Flood Risk Management Santa, Santa Cruz and Monterey Counties

Dear Mr. O'Day,

Attached is a list of tribes that have cultural and traditional affiliation to the area of potential project effect (APE) referenced above. I suggest you contact all of those listed, if they cannot supply information, they might recommend others with specific knowledge. The list should provide a starting place to locate areas of potential adverse impact within the APE. By contacting all those on the list, your organization will be better able to respond to claims of failure to consult, as may be required under particular state statutes. If a response has not been received within two weeks of notification, the Native American Heritage Commission (NAHC) requests that you follow-up with a telephone call to ensure that the project information has been received.

The NAHC also recommends that project proponents conduct a record search of the NAHC Sacred Lands File (SLF) and the appropriate regional archaeological Information Center of the California Historic Resources Information System (CHRIS) (http://ohp.parks.ca.gov/?page_id=1068) to determine if any tribal cultural resources are located within the area(s) affected by the proposed action. The SFL, established under Public Resources Code section 5094, are sites submitted for listing to the NAHC by California Native American tribes. The request form can be found at <http://nahc.ca.gov/resources/forms/>. Please note records maintained by the NAHC and CHRIS is not exhaustive, and a negative response to these searches does not preclude the existence of tribal cultural resources. A tribe may in fact be the only source for information about tribal cultural resources within an APE.

If you receive notification of change of addresses and phone numbers from any of these tribes, please notify me. With your assistance we are able to assure that our lists contain current information. If you have any questions or need additional information, please contact via email: frank.lienert@nahc.ca.gov

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank Lienert", written over a horizontal line.

Frank Lienert
Associate Governmental Program Analyst

Native American Heritage Commission

Native American Contacts

10/10/2017

Esselen Tribe of Monterey County
Tom Little Bear Nason
38655 Tassaiara Road
Carmel Valley, CA 93924
(408) 659-2153

Esselen
Ohlone

Amah Mutsun Tribal Band of Mission San Juan Bautista
Irenne Zwierlein, Chairperson
789 Canada Road
Woodside, CA 94062
amahmutsuntribal@gmail.com
(650) 851-7489 Cell
(650) 851-7747 Office
(650) 332-1526 Fax

Ohlone/Costanoan

Coastanoan Rumsen Carmel Tribe
Tony Cerda, Chairperson
244 E. 1st Street
Pomona, CA 91766
rumsen@aol.com
(909) 524-8041 Cell
(909) 629-6081

Ohlone/Costanoan

Costanoan Ohlone Rumsen-Mutsen Tribe
Patrick Orozco, Chairman
644 Peartree Drive
Watsonville, CA 95076
yanapvoic97@gmail.com
(831) 728-8471

Ohlone/Costanoan

Salinan Tribe of Monterey, San Luis Obispo Counties
Patti Danton, Tribal Administrator
7070 Morro Road, Suite A
Atascadero, CA 93422
info@salinantribe.com
(805) 464-2650
(805) 423-5195 Cell

Salinan

Xolon-Salinan Tribe
Karen White, Council Chairperson
P.O. Box 7045
Spreckels, CA 93962
blukat41@vahoo.com
831-238-1488

Salinan

Ohlone/Coastanoan-Esselen Nation
Louise Miranda-Ramirez, Chairperson
P.O. Box 1301
Monterey, CA 93942
ramirez.louise@vahoo.com
(408) 629-5189
408-661-2486 Cell

Esselen
Ohlone/Costanoan

Muwekma Ohlone Indian Tribe of the SF Bay Area
Rosemarv Cambra, Chairperson
P.O. Box 360791
Milpitas, CA 95036
muwekma@muwekma.org
(408) 314-1898
(510) 581-5194

Ohlone / Costanoan

Amah Mutsun Tribal Band
Valentin Lopez, Chairperson
P.O. Box 5272
Galt, CA 95632
vlopez@amahmutsun.org
(916) 743-5833

Ohlone/Costanoan
Northern Valley Yokuts

Indian Canyon Mutsun Band of Costanoan
Ann Marie Savers, Chairperson
P.O. Box 28
Hollister, CA 95024
ams@indiancanyon.org
(831) 637-4238

Ohlone/Costanoan

This list is current only as of the date of this document and is based on the information available to the Commission on the date it was produced.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resource Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources assessments for the proposed **Pajaro River Flood Risk Management Santa, Santa Cruz and Monterey Counties**



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA, 95814-2922

Environmental Resources Branch

Mr. Reid Nelson
Advisory Council on Historic Preservation
Office of Federal Agency Programs
401 F Street NW, Suite 308
Washington DC 20001-2637

Dear Mr. Nelson:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, we are writing to inform you of the proposed Pajaro River Flood Risk Management Project (Project), Watsonville, California, and to offer the opportunity to participate in the development of a programmatic agreement (PA) for the Project. This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFSs), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89–789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101–640, November 28, 1990).

The project APE is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The area of potential effects (APE) encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

The Native American Heritage Commission (NAHC) has been made aware of this study and letters have also been mailed to tribes and interested parties identified by the NAHC to initiate consultation, provide project information, to request information related to cultural resources in the project area, and ask for comments on the proposed APE. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known

cultural resources that are potentially eligible for the National Register of Historic Places are present within the APE and portions of areas being considered for the project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process. The PA will outline the responsibilities of the Corps, NFSs, and other project proponents and will include stipulations for the identification and evaluation of historic properties, determination of effects to historic properties, long-term monitoring actions to measure the effects of the undertaking, preparation of historic properties treatment plans, public participation, and communication with Native Americans. We would like to offer you the opportunity to participate in consultations for development of the PA.

We invite any comments you may have on the proposed Pajaro Project. Correspondence may be sent to Dr. Patrick O'Day, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, California 95814-2922. If you have any questions or would like additional information about the Section 106 compliance and consultation, please contact Dr. O'Day at (916) 557-7028 or by email at: Patrick.M.O'Day@usace.army.mil. Please contact Ms. Jamie O'Halloran, Project Manager, SPN at (415) 503-6738 with any specific project questions.

Sincerely,

Mark T. Ziminske
Chief, Environmental Resources Branch

Enclosure



Preserving America's Heritage

October 30, 2017

Jessica Burton Evans
Chief, Environmental Resources Branch
US Army Corps of Engineers, San Francisco District
1455 Market Street
San Francisco, CA 94103-1398

Ref: *Proposed Programmatic Agreement for Pajaro River Flood Risk Management Project
United States Army Corps of Engineers, San Francisco District
ACHPConnect Log Number: 012181*

Dear Ms. Evans:

On October 24, 2017, the Advisory Council on Historic Preservation (ACHP) received your notification of intent to develop a programmatic agreement for the referenced project was submitted in accordance with Section 800.6(a)(1) of our regulations, "Protection of Historic Properties" (36 CFR Part 800). The background documentation included with your submission does not meet the specifications in Section 800.11(e) of the ACHP's regulations. We, therefore, are unable to determine whether Appendix A of the regulations, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, applies to this undertaking. Accordingly, we request that you submit the following additional information so that we can determine whether our participation in the consultation to resolve adverse effects and develop a programmatic agreement is warranted.

- Copies or summaries of any views provided by consulting parties, the public, and the applicable State Historic Preservation Officers.
- Copies or summaries of any views provided by any affected Indian tribe.

Upon receipt of the additional information, we will notify you within 15 days of our decision.

If you have any questions, please contact Mr. Christopher Daniel, Program Analyst at (202) 517-0223 or by email at cdaniel@achp.gov and reference the ACHPConnect Log Number.

Sincerely,

Artisha Thompson
Historic Preservation Technician
Office of Federal Agency Programs



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 25, 2017

Environmental Section B

Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Ms. Polanco:

The U.S. Army Corps of Engineers is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFSs), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). In accordance with Section 106 of the National Historic Preservation Act, the Corps is requesting comments on the determination and documentation of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of, and adherence to, the Section 106 process and would define the roles of the different project proponents (36 CFR § 800.14[b][3]).

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations.

The project APE includes the footprint of project construction with all staging areas and access routes. It is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The APE encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road. Project measures will include improvements to existing levees, the construction of new set back levees and flood walls, modifications to pump stations and discharge pipes, the installation of culverts, road construction, and bridge replacements.

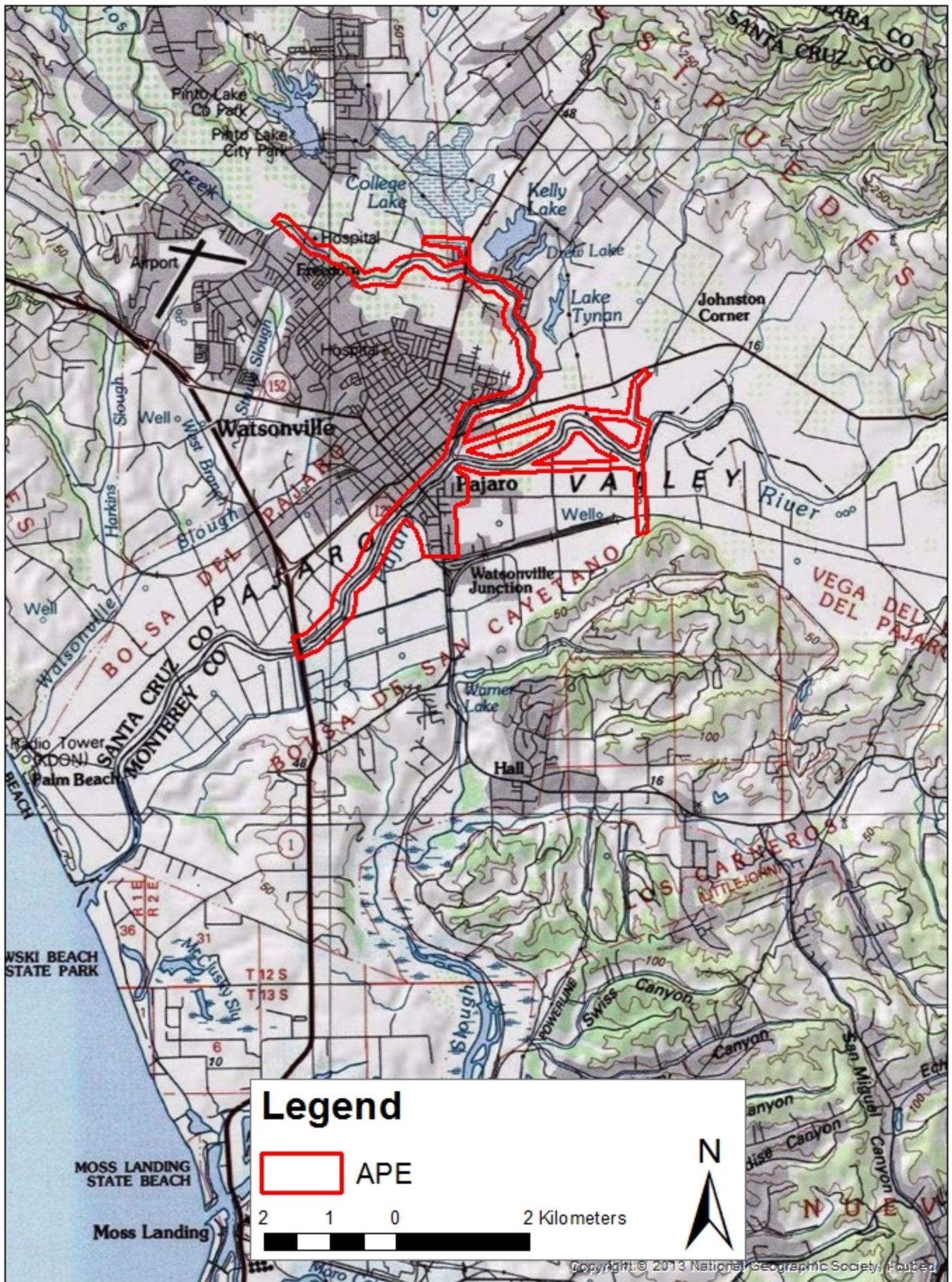
The Native American Heritage Commission (NAHC) and Advisory Council on Historic Preservation (ACHP) have been made aware of this study and the ACHP has been offered the

opportunity to participate in the development of a PA for the project. Letters have also been mailed to tribes and interested parties identified by the NAHC to initiate consultation, provide project information, to request information related to cultural resources in the project area, and ask for comments on the proposed APE. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known potentially National Register of Historic Places eligible cultural resources are present within the APE and portions of areas being considered for the Project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process. The PA will define the requirements for resource identification and evaluation and outline the responsibilities of the Corps, Santa Cruz County, Monterey County, and other project proponents.

We are submitting to you a map of the Project APE (Enclosure) and are requesting any written comments you may have within 30 days of receipt of this letter. Please send comments or questions to Dr. Patrick M. O'Day, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-7028 and by email at Patrick.M.O'Day@usace.army.mil.

Sincerely,

for Jessica Burton Evans
Chief, Environmental Section B



Legend

APE

2 1 0 2 Kilometers



**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

1725 23rd Street, Suite 100
SACRAMENTO, CA 95816-7100
(916) 445-7000 Fax: (916) 445-7053
calshpo@parks.ca.gov
www.ohp.parks.ca.gov



November 21, 2017

In reply refer to: COE_2017_1020_002

Jessica Burton Evans
Chief, Environmental Section B
San Francisco District
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1398

Subject: Section 106 Consultation for the Pajaro River Flood Risk Management Project in Santa Cruz and Monterey County, California

Dear Ms. Burton Evans:

The California State Historic Preservation Officer (SHPO) is in receipt of your letter received October 27, 2017, requesting my review and comment with regard to the proposed Pajaro River Flood Risk Management Project in Monterey and Santa Cruz Counties, California. The Army Corps of Engineers (COE) is consulting with me pursuant to the 36 CFR Part 800 (as amended 8-05-04), the regulations implementing Section 106 of the National Historic Preservation Act. The COE is requesting comments on their determination and documentation of the Area of Potential Effects for the proposed undertaking as well as their proposal to develop a Programmatic Agreement (PA) to guide their Section 106 compliance for the undertaking.

The COE, in collaboration with the non-federal sponsors of Santa Cruz and Monterey Counties undertook a study to determine the Federal interest in providing additional flood-risk management improvements to the Pajaro River and its tributaries. The Pajaro River watershed has a long history of flooding and flood related damages. The proposed undertaking is the result of this study and includes improvements to existing levees, the construction of new setback levees and flood walls, modifications to pump stations and discharge pipes, the installation of culverts, road construction, and bridge replacements. The COE has defined the APE as an area including the footprint of the proposed project construction with all staging areas and access routes. This APE encompasses approximately 10,000 acres including stream channels, active floodplains and terraces along the Pajaro River, Salsipuedes Creek, and Corralitos Creek. A four-mile stretch of the Pajaro River, a 2.5-mile stretch of Salsipuedes Creek, and 2-mile stretch of Corralitos Creek are included in the APE.

The Native American Heritage Commission (NAHC) and the Advisory Council on Historic Preservation (ACHP) were notified of the study and the ACHP was offered the opportunity to participate in the development of the PA. The COE has also sent letters to the tribes

listed by the NAHC for this location and other interested parties. A records search was conducted that revealed known potentially National Register eligible properties are present within the APE and portions of areas being considered for the project have never been surveyed for cultural resources. Consequently, the potential of project activities to affect historic properties cannot be determined at this time. For this reason, the COE has proposed the development of a PA to guide the identification and evaluation of historic properties and the finding of effect pursuant to Section 106 of the NHPA as the project is further developed. The COE has submitted a copy of the APE map and has requested comments on the APE and the proposal to develop a PA for the undertaking. After reviewing the submitted materials, I have the following comments:

- Pursuant to 36 CFR 800.4(a)(1), the Area of Potential Effects (APE) as defined currently appears to be appropriate for the undertaking. Please continue to consult with my office regarding any design changes that would require revision of the APE as the development of the undertaking progresses.
- Pursuant to 36 CFR 800.4(b), it appears that the COE will need to delay identification and evaluation of historic properties until final approval of the undertaking is granted, following completion of the National Environmental Protection Act (NEPA) process for the project. Therefore, it would be appropriate for the COE to develop a Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b) to establish a process by which the presence of historic properties within the APE can be identified and evaluated once the project design is approved and finalized.

If you have any questions, please contact Jessica Tudor of my staff at (916) 445-7016 or jessica.tudor@parks.ca.gov.

Sincerely,



Julianne Polanco
State Historic Preservation Officer



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Mrs. Irene Zwierlein
Chairperson
Amah Mutsun Tribal Band of Mission San Juan Bautista
789 Canada Road
Woodside, CA 94062

Dear Chairperson Zwierlein,

The U.S. Army Corps of Engineers (Corps) is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations. Project measures will comprise various physical improvements.

The project APE includes the footprint of project construction and all staging areas and access routes. It is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The APE encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

The Native American Heritage Commission has been made aware of this study and the Advisory Council on Historic Preservation has been offered the opportunity to participate in the development of a PA for the project. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known and potentially National Register of Historic Places eligible cultural resources are present within the APE and portions of areas being considered for the Project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process.

We are submitting to you a map of the APE (Enclosure) and would like to work with you to identify any concerns related to the Project. We would also like to request any information you might have in regard to resources or properties in the area that we should take into consideration. Our tribal responsibilities are integral to this process and we are interested in understanding any information you can provide us. We are sensitive toward the protection of Traditional Cultural Properties (TCPs) and sacred sites and will make every effort to avoid them. Also, if you have knowledge of locations of archaeological sites, sacred sites, TCPs, areas of traditional cultural value, or areas of concern in or near the project locations, we respectfully request that you provide that information in writing to us within 30 days. We would be pleased to answer any questions you might have. If you are interested, we would also be pleased to provide you with further documentation of our efforts to identify potential cultural sites and areas of concern.

Under no circumstances would the Corps unnecessarily disclose sensitive information shared by you to the public. Corps tribal policy states that to the extent allowed by law, the Corps will protect the location of historic properties, in consultation with tribes. The Corps takes this obligation seriously. However, the Corps is required to provide public access to its records under the Freedom of Information Act and can only withhold those records protected from disclosure under a statutory exemption or exclusion. Section 304 of the National Historic Preservation Act provides protection from disclosure for certain specific kinds of information about historic properties, but the application of that statute and the extent to which it applies, is finite.

Please send comments and questions to Dr. Patrick M. O'Day, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-7028 and by email at Patrick.M.O'Day@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jessica Burton Evans', with a long horizontal flourish extending to the right.

Jessica Burton Evans
Chief, Environmental Section B





REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Ms. Karen White
Council Chairperson
Xolon-Salinan Tribe
P.O. Box 7045 Salinan
Spreckels, CA 93962

Dear Chairperson White,

The U.S. Army Corps of Engineers (Corps) is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations. Project measures will comprise various physical improvements.

The project APE includes the footprint of project construction and all staging areas and access routes. It is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The APE encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

The Native American Heritage Commission has been made aware of this study and the Advisory Council on Historic Preservation has been offered the opportunity to participate in the development of a PA for the project. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known and potentially National Register of Historic Places eligible cultural resources are present within the APE and portions of areas being considered for the Project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process.

We are submitting to you a map of the APE (Enclosure) and would like to work with you to identify any concerns related to the Project. We would also like to request any information you might have in regard to resources or properties in the area that we should take into consideration. Our tribal responsibilities are integral to this process and we are interested in understanding any information you can provide us. We are sensitive toward the protection of Traditional Cultural Properties (TCPs) and sacred sites and will make every effort to avoid them. Also, if you have knowledge of locations of archaeological sites, sacred sites, TCPs, areas of traditional cultural value, or areas of concern in or near the project locations, we respectfully request that you provide that information in writing to us within 30 days. We would be pleased to answer any questions you might have. If you are interested, we would also be pleased to provide you with further documentation of our efforts to identify potential cultural sites and areas of concern.

Under no circumstances would the Corps unnecessarily disclose sensitive information shared by you to the public. Corps tribal policy states that to the extent allowed by law, the Corps will protect the location of historic properties, in consultation with tribes. The Corps takes this obligation seriously. However, the Corps is required to provide public access to its records under the Freedom of Information Act and can only withhold those records protected from disclosure under a statutory exemption or exclusion. Section 304 of the National Historic Preservation Act provides protection from disclosure for certain specific kinds of information about historic properties, but the application of that statute and the extent to which it applies, is finite.

Please send comments and questions to Dr. Patrick M. O'Day, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-7028 and by email at Patrick.M.O'Day@usace.army.mil.

Sincerely,



Jessica Burton Evans
Chief, Environmental Section B



Legend





REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Ms. Patti Donton
Tribal Administrator
Salinan Tribe of Monterey and San Luis Obispo Counties
7070 Morro Road. Suite A
Atascadero, CA 93422

Dear Ms. Donton,

The U.S. Army Corps of Engineers is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations. Project measures will comprise various physical improvements.

The project APE includes the footprint of project construction and all staging areas and access routes. It is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The APE encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

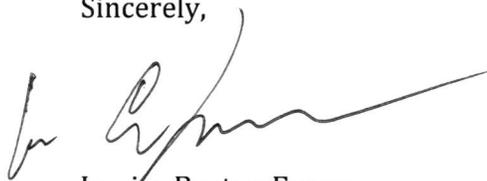
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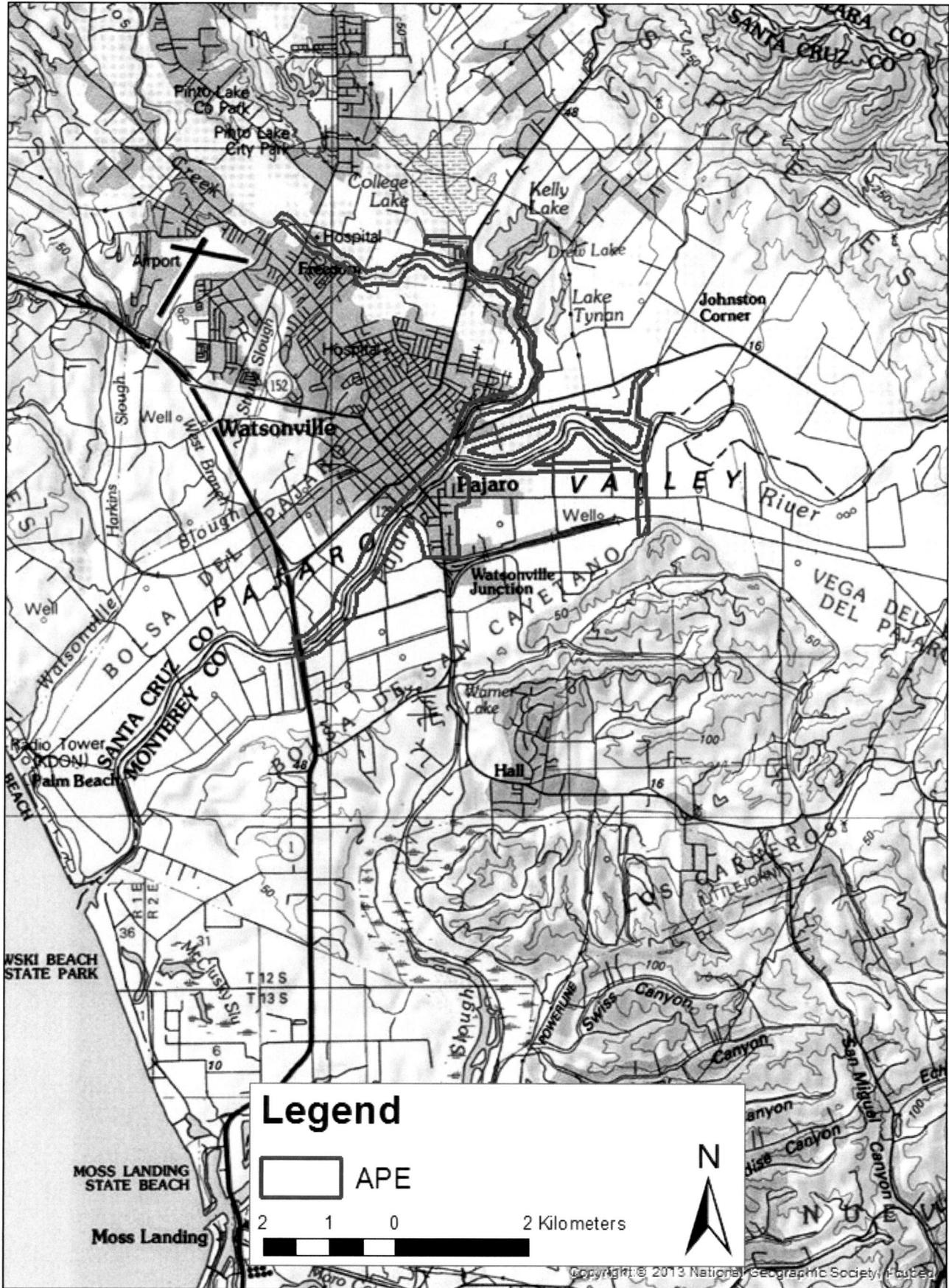
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Sincerely,

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Jessica Burton Evans
Chief, Environmental Section B





REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Mr. Patrick Orozco
Chairman
Costanoan Ohlone Rumsen-Mutsen Tribe
644 Peartree Drive
Watsonville, CA 95076

Dear Chairman Orozco,

The U.S. Army Corps of Engineers is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations. Project measures will comprise various physical improvements.

The project APE includes the footprint of project construction and all staging areas and access routes. It is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The APE encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

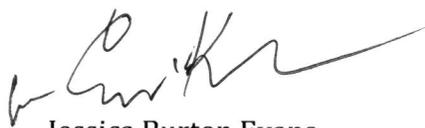
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We are submitting to you a map of the APE (Enclosure) and would like to work with you to identify any concerns related to the Project. We would also like to request any information you might have in regard to resources or properties in the area that we should take into consideration. Our tribal responsibilities are integral to this process and we are interested in understanding any information you can provide us. We are sensitive toward the protection of Traditional Cultural Properties (TCPs) and sacred sites and will make every effort to avoid them. Also, if you have knowledge of locations of archaeological sites, sacred sites, TCPs, areas of traditional cultural value, or areas of concern in or near the project locations, we respectfully request that you provide that information in writing to us within 30 days. We would be pleased to answer any questions you might have. If you are interested, we would also be pleased to provide you with further documentation of our efforts to identify potential cultural sites and areas of concern.

Under no circumstances would the Corps unnecessarily disclose sensitive information shared by you to the public. Corps tribal policy states that to the extent allowed by law, the Corps will protect the location of historic properties, in consultation with tribes. The Corps takes this obligation seriously. However, the Corps is required to provide public access to its records under the Freedom of Information Act and can only withhold those records protected from disclosure under a statutory exemption or exclusion. Section 304 of the National Historic Preservation Act provides protection from disclosure for certain specific kinds of information about historic properties, but the application of that statute and the extent to which it applies, is finite.

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Sincerely,

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Jessica Burton Evans
Chief, Environmental Section B



REPLY TO
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SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Ms. Polanco:

The U.S. Army Corps of Engineers is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFSs), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). In accordance with Section 106 of the National Historic Preservation Act, the Corps is requesting your concurrence on the determination and documentation of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of, and adherence to, the Section 106 process and would define the roles of the different project proponents (36 CFR § 800.14[b][3]).

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations.

The project APE includes the footprint of project construction with all staging areas and access routes. It is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The APE encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

The Native American Heritage Commission (NAHC) and Advisory Council on Historic Preservation (ACHP) have been made aware of this study and the ACHP has been offered the opportunity to participate in the development of a PA for the project. Letters have also been mailed to tribes and interested parties identified by the NAHC to initiate consultation, provide project information, to request information related to cultural resources in the project area, and ask for comments on the proposed APE. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known potentially National Register of Historic Places eligible cultural resources are present within the APE and portions of areas being considered for the Project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process. The PA will define the requirements for resource identification and evaluation and outline the responsibilities of the Corps, Santa Cruz County, Monterey County, and other project proponents.

We are submitting to you a map of the Project APE (Enclosure) and are requesting any written comments you may have within 30 days of receipt of this letter. Please send comments or questions to Dr. Patrick M. O'Day, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-7028 and by email at Patrick.M.O'Day@usace.army.mil.

Sincerely,



Jessica Burton Evans
Chief, Environmental Section B



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SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Mr. Reid Nelson
Advisory Council on Historic Preservation
Office of Federal Agency Programs
401 F Street NW, Suite 308
Washington DC 20001-2637

Dear Mr. Nelson:

In accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, we are writing to inform you of the proposed Pajaro River Flood Risk Management Project (Project), Watsonville, California, and to offer the opportunity to participate in the development of a programmatic agreement (PA) for the Project. This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFSs), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990).

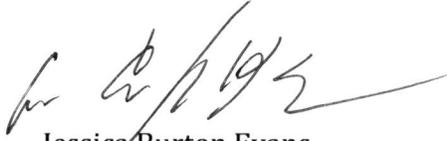
The project APE is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The area of potential effects (APE) encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

The Native American Heritage Commission (NAHC) has been made aware of this study and letters have also been mailed to tribes and interested parties identified by the NAHC to initiate consultation, provide project information, to request information related to cultural resources in the project area, and ask for comments on the proposed APE. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known cultural resources that are potentially eligible for the National Register of Historic Places are present within the APE and portions of areas being considered for the project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process. The PA will outline the responsibilities of the Corps, NFSs, and other project proponents and will include stipulations for the identification and evaluation of historic

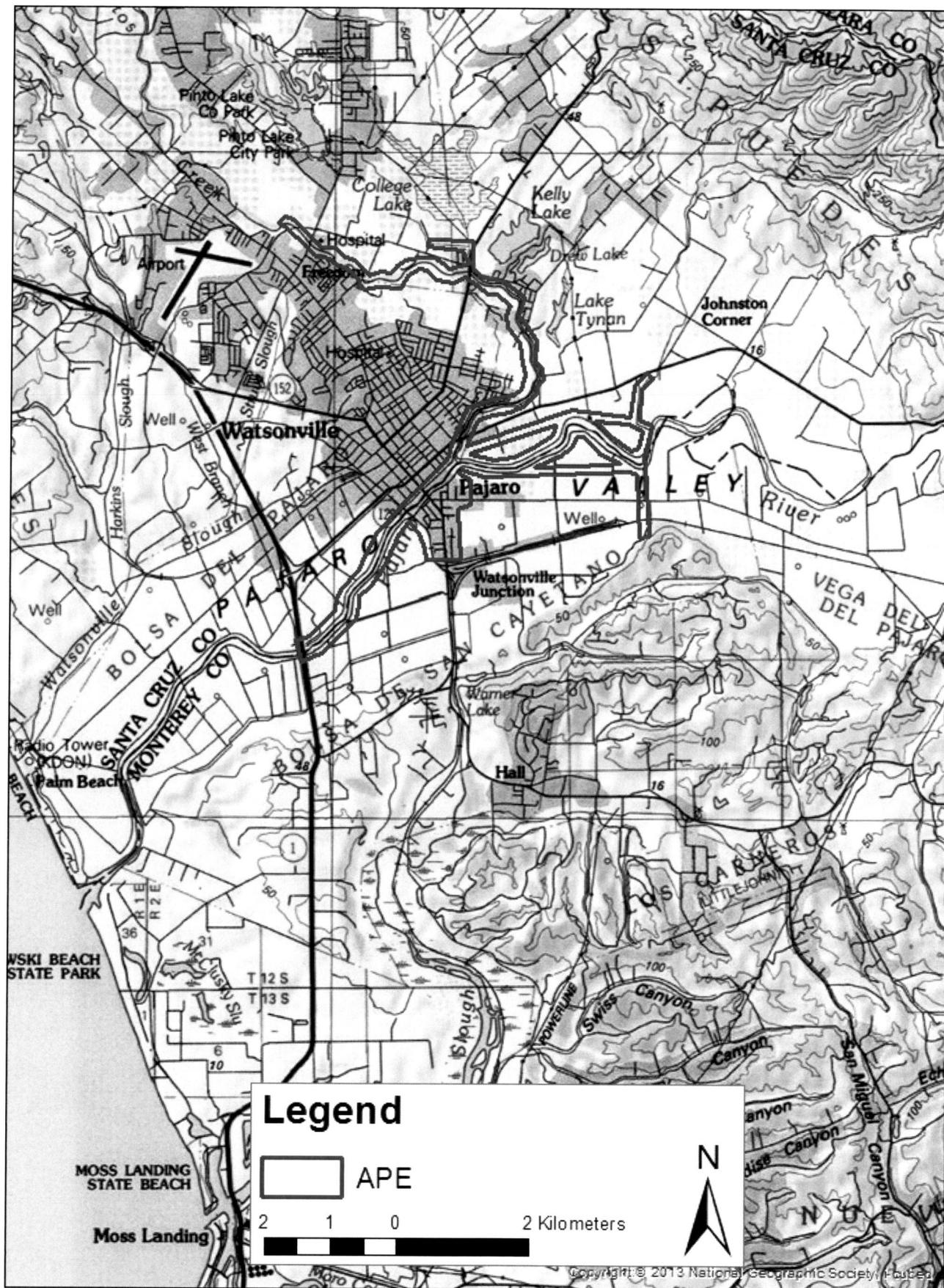
properties, determination of effects to historic properties, long-term monitoring actions to measure the effects of the undertaking, preparation of historic properties treatment plans, public participation, and communication with Native Americans. We would like to offer you the opportunity to participate in consultations for development of the PA.

We invite any comments you may have on the proposed Pajaro Project. Correspondence may be sent to Dr. Patrick O'Day, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, California 95814-2922. If you have any questions or would like additional information about the Section 106 compliance and consultation, please contact Dr. O'Day at (916) 557-7028 or by email at: Patrick.M.O'Day@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Burton Evans', written over a horizontal line.

Jessica Burton Evans
Chief, Environmental Section B





REPLY TO
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DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Ms. Ann Marie Savers
Chairperson
Indian Canyon Mutsun Band of Costanoan
P.O. Box 28
Hollister, CA 95024

Dear Chairperson Savers,

The U.S. Army Corps of Engineers (Corps) is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations. Project measures will comprise various physical improvements.

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The Native American Heritage Commission has been made aware of this study and the Advisory Council on Historic Preservation has been offered the opportunity to participate in the development of a PA for the project. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known and potentially National Register of Historic

Places eligible cultural resources are present within the APE and portions of areas being considered for the Project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process.

We are submitting to you a map of the APE (Enclosure) and would like to work with you to identify any concerns related to the Project. We would also like to request any information you might have in regard to resources or properties in the area that we should take into consideration. Our tribal responsibilities are integral to this process and we are interested in understanding any information you can provide us. We are sensitive toward the protection of Traditional Cultural Properties (TCPs) and sacred sites and will make every effort to avoid them. Also, if you have knowledge of locations of archaeological sites, sacred sites, TCPs, areas of traditional cultural value, or areas of concern in or near the project locations, we respectfully request that you provide that information in writing to us within 30 days. We would be pleased to answer any questions you might have. If you are interested, we would also be pleased to provide you with further documentation of our efforts to identify potential cultural sites and areas of concern.

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Sincerely,


Jessica Burton Evans
Chief, Environmental Section B



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SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Ms. Rosemary Cambra
Chairperson
Muwekma Oh lone Indian Tribe of the SF Bay Area
P.O. Box 360791
Milpitas. CA 95036

Dear Chairperson Cambra,

The U.S. Army Corps of Engineers (Corps) is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

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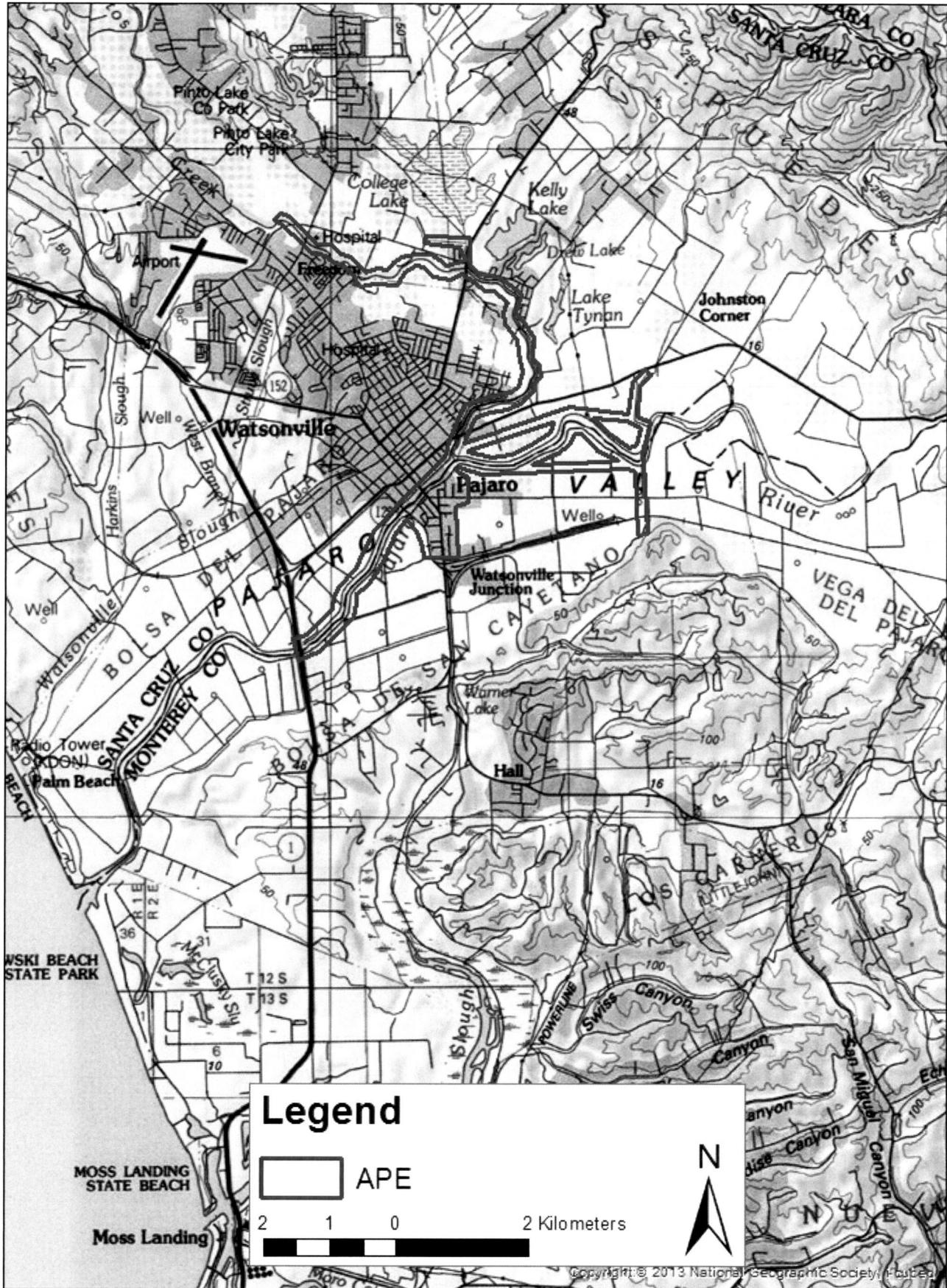
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Sincerely,



Jessica Burton Evans
Chief, Environmental Section B





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October 18, 2017

Environmental Section B

Mr. Valentin Lopez
Chairperson
Amah Mutsun Tribal Band
P.O. Box 5272
Galt, CA 95632

Dear Chairperson Lopez,

The U.S. Army Corps of Engineers (Corps) is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

The Pajaro River Watershed has a long history of flooding that has resulted in substantial damages in the towns of Pajaro and Watsonville and to surrounding agricultural areas. This Project study involved the formulation of alternative plans to reduce flood risk in the study area, evaluation of economic and environmental impacts of the alternatives, and identification of a plan that maximizes National Economic Development benefits and complies with federal and state environmental regulations. Project measures will comprise various physical improvements.

The project APE includes the footprint of project construction and all staging areas and access routes. It is located within the lower Pajaro River watershed that drains into the Pacific Ocean about 75 miles south of San Francisco and includes portions of Santa Cruz, and Monterey Counties. The APE encompasses an area of approximately 10,000 acres, which includes the stream channels, active floodplains, and terraces along the Pajaro River, Salsipuedes, Creek, and Corralitos Creek. Specifically, the APE includes a 4 mile stretch of the Pajaro River that extends east from Highway 1, a 2.5 mile stretch along Salsipuedes Creek extending north from its confluence with the Pajaro River in Watsonville, and a 2 mile stretch of Corralitos Creek which extends west from near East Lake Road.

The Native American Heritage Commission has been made aware of this study and the Advisory Council on Historic Preservation has been offered the opportunity to participate in the development of a PA for the project. A records search was conducted at the Northwest Information Center, Sonoma State University and background research was conducted during previous iterations of the Project. These revealed that known and potentially National Register of Historic Places eligible cultural resources are present within the APE and portions of areas being considered for the Project have not been surveyed. Consequently, the potential of Project activities to adversely affect sites cannot currently be determined. We are, therefore, developing a PA to ensure compliance with the Section 106 process.

We are submitting to you a map of the APE (Enclosure) and would like to work with you to identify any concerns related to the Project. We would also like to request any information you might have in regard to resources or properties in the area that we should take into consideration. Our tribal responsibilities are integral to this process and we are interested in understanding any information you can provide us. We are sensitive toward the protection of Traditional Cultural Properties (TCPs) and sacred sites and will make every effort to avoid them. Also, if you have knowledge of locations of archaeological sites, sacred sites, TCPs, areas of traditional cultural value, or areas of concern in or near the project locations, we respectfully request that you provide that information in writing to us within 30 days. We would be pleased to answer any questions you might have. If you are interested, we would also be pleased to provide you with further documentation of our efforts to identify potential cultural sites and areas of concern.

Under no circumstances would the Corps unnecessarily disclose sensitive information shared by you to the public. Corps tribal policy states that to the extent allowed by law, the Corps will protect the location of historic properties, in consultation with tribes. The Corps takes this obligation seriously. However, the Corps is required to provide public access to its records under the Freedom of Information Act and can only withhold those records protected from disclosure under a statutory exemption or exclusion. Section 304 of the National Historic Preservation Act provides protection from disclosure for certain specific kinds of information about historic properties, but the application of that statute and the extent to which it applies, is finite.

Please send comments and questions to Dr. Patrick M. O'Day, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J St. Sacramento, CA, 95814-2922, or by phone at (916) 557-7028 and by email at Patrick.M.O'Day@usace.army.mil.

Sincerely,



Jessica Burton Evans
Chief, Environmental Section B





REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Ms. Louise Miranda-Ramirez
Chairperson
Ohlone/Coastanoan-Esselen Nation
P.O. Box 1301
Monterey, CA 93942

Dear Chairperson Miranda-Ramirez,

The U.S. Army Corps of Engineers (Corps) is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

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Sincerely,



Jessica Burton Evans
Chief, Environmental Section B



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ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Mr. Tom Little Bear Nason
Esselen Tribe of Monterey County
38655 Tassajara Road
Carmel Valley, CA 93924

Dear Mr. Nason

The U.S. Army Corps of Engineers (Corps) is writing to initiate consultation on the Pajaro River Flood Risk Management Project (Project). This Project is being conducted by the U.S. Army Corps of Engineers San Francisco District (SPN) in collaboration with the non-federal sponsors (NFS), Santa Cruz and Monterey Counties. The purpose of the study was to determine if there is Federal interest in providing additional flood risk management improvements along the Pajaro River and its tributaries. The existing Pajaro Project was authorized by the Flood Control Act of 1966 (Section 203, Public Law 89-789, 80 Stat. 1421) and re-authorized by the WRDA 1990, Section 107 Continuation of Authorization of Certain Projects (Public Law 101-640, November 28, 1990). The Corps is requesting your comments on the determination of the area of potential effects (APE) (36 CFR § 800.4[a] [1]) and comments on the development of a programmatic agreement (PA). The PA would guide implementation of and adherence to the Section 106 process. We also respectfully request any information regarding cultural resources within the proposed areas of the Project.

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Jessica Burton Evans
Chief, Environmental Section B





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SAN FRANCISCO DISTRICT, US ARMY CORPS OF ENGINEERS
1455 MARKET STREET,
SAN FRANCISCO CALIFORNIA 94103-1398

October 18, 2017

Environmental Section B

Mr. Tony Cerda
Chairperson
Coastanoan Rumsen Carmel Tribe
244 E. 1st Street
Pomona, CA 91766

Dear Chairperson Cerda,

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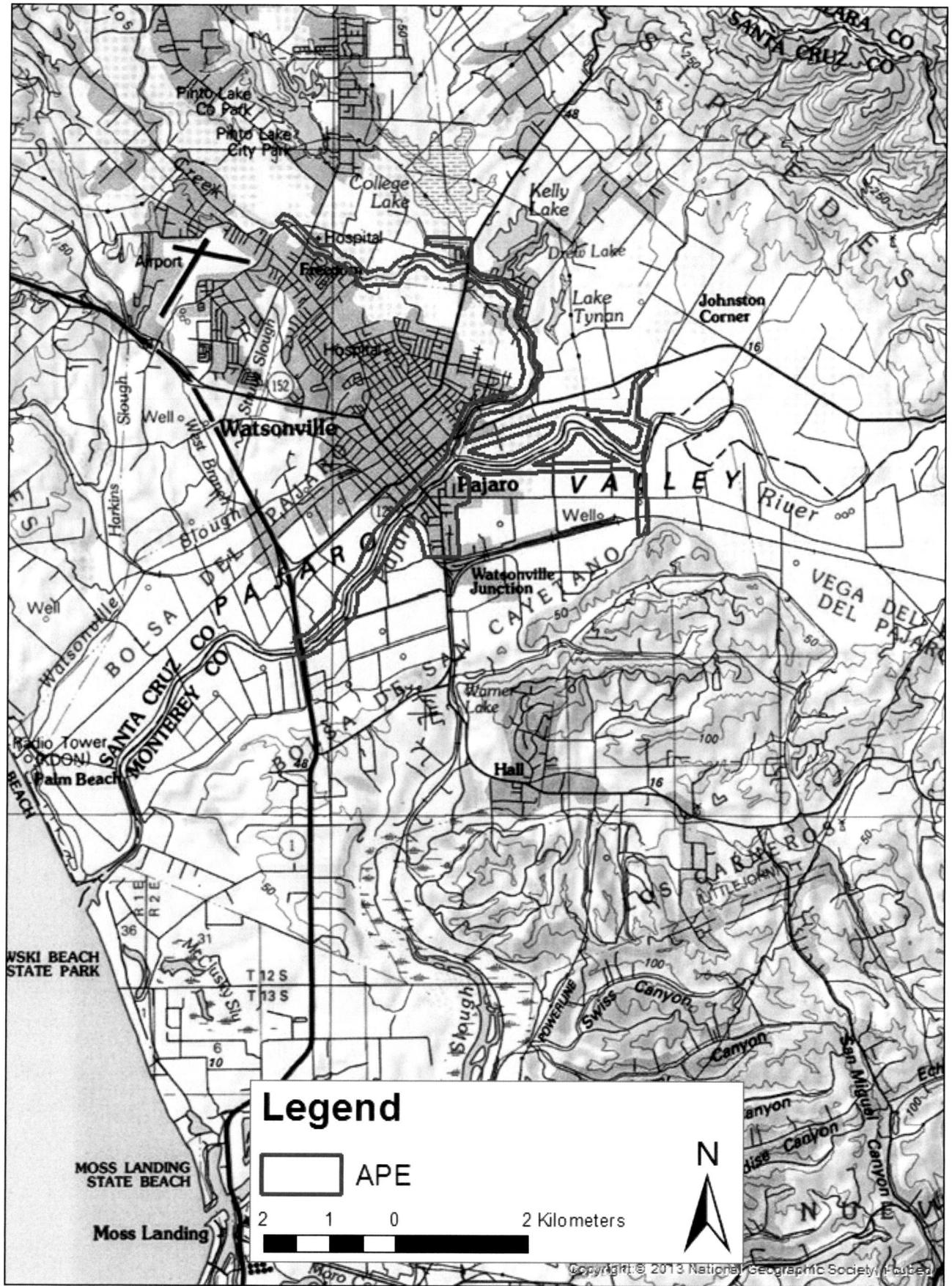
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Sincerely,



Jessica Burton Evans
Chief, Environmental Section B



Legend

APE

2 1 0 2 Kilometers



Ohlone/Costanoan-Esselen Nation



*Previously acknowledged as
The San Carlos Band of
Mission Indians
The Monterey Band
And also known as
O.C.E.N. or Esselen Nation
P.O. Box 1301
Monterey, CA 93942*

www.ohlonecostanoanesselenation.org

May 1, 2018

Dr. Patrick M. O'Day
Archaeologist U.S. Army Corps of Engineers
Sacramento District
1325 J. Street
Sacramento, CA
Patrick.M.O'Day@usace.army.mil

Re: Pajaro River Flood Risk Management Project (Monterey County only)
Saleki Atsa,

Ohlone/Costanoan-Esselen Nation is an historically documented previously recognized tribe. OCEN is the legal tribal government representative for over 600 enrolled members of Esselen, Carmeleno, Monterey Band, Rumsen, Chalon, Soledad Mission, San Carlos Mission and/or Costanoan Mission Indian descent of Monterey County. Though other indigenous people may have lived in the area, the area is the indigenous homeland of our people. Included with this letter please find a territorial map by Taylor 1856; Levy 1973; and Milliken 1990, indentifying Tribal areas.

Ohlone/Costanoan-Esselen Nation objects to all excavation in known cultural lands, even when they are described as previously disturbed, and of no significant archaeological value. Please be advised that it is our priority that our ancestor's remains be protected and undisturbed. We desire that all sacred burial items be left with our ancestors on site or as culturally determined by OCEN. We request all cultural items returned to Ohlone/Costanoan-Esselen Nation. We ask for the respect that is afforded all our current day deceased, by no other word these burial sites are cemeteries, respect for our ancestors as you would expect respect for your deceased family members in today's cemeteries. **Our definition of respect is no disturbance.**

OCEN's Tribal leadership desires to be provided with:

- Archaeological reports/surveys, including subsurface testing, and presence/absence testing.
 - OCEN request to be included in mitigation and recovery programs,
 - OCEN request that Cultural and Tribal mitigation measures reflect request for OCEN Tribal Monitor with all soil disturbance,
 - Reburial of any of our ancestral remains, burial artifacts,
 - Placement/return of all cultural items to OCEN, and that
 - A Native American Monitor of Ohlone/Costanoan-Esselen Nation, approved by the OCEN Tribal Council is used within our aboriginal territory.
- OCEN request consultation with the lead agency.**

We ask that a sacred lands search with the Northwest Information Center, Sonoma State University and the Native American Heritage Commission. Please feel free to contact me at (408) 629-5189. Nimasianexelpasaleki. Thank you

Sincerely and Respectfully Yours,

Louise J. Miranda Ramirez, Chairperson
Ohlone/Costanoan-Esselen Nation
(408) 629-5189

Cc: OCEN Tribal Council

From: [O'Day, Patrick M CIV \(US\)](#)
To: [Phelps, Jessica L CIV \(US\)](#)
Subject: FW: [Non-DoD Source] Pajaro River Flood Risk
Date: Tuesday, October 9, 2018 1:37:06 PM

-----Original Message-----

From: O'Day, Patrick M CIV (US)
Sent: Wednesday, May 2, 2018 4:05 PM
To: 'Louise Ramirez' <ramirez.louise@yahoo.com>
Subject: RE: [Non-DoD Source] Pajaro River Flood Risk

Dear Ms. Ramirez,

Thank you for your letter and for taking the time to talk to me today. As per our phone conversation I will provide you with a written response to your letter dated May 1, 2018 over the next two weeks. As part of the consultation record for the project I also wanted to provide a summary of the concerns we discussed on the phone. I am working from notes so please let me know if I missed anything and if it is accurate.

- 1) Ensure that Tribal views and the views of the archaeologist are considered equally.
- 2) Curation. It is the Esselen Nation's preference that all artifacts and cultural materials be returned to the Tribe or appropriately reburied. You do not want to see artifacts or other materials inappropriately curated or put on display in a museum.
- 3) Analysis. No analyses of human remains and that non-destructive analyses of artifacts and other cultural materials are always preferred.
- 4) Provide areas, or land, for reburial that are safe from future flooding and any other impacts.

Please feel free to expand on this list or add any detail. Thanks again,

Sincerely

Patrick

-----Original Message-----

From: Louise Ramirez [<mailto:ramirez.louise@yahoo.com>]
Sent: Wednesday, May 2, 2018 2:19 PM
To: O'Day, Patrick M CIV (US) <Patrick.M.O'Day@usace.army.mil>
Subject: [Non-DoD Source] Pajaro River Flood Risk

Saleki Atsa,

Attached is OCEN's request for consultation.
Thank you

Louise J. Miranda Ramirez
Tribal Chairwoman
Ohlone/Costanoan-Esselen Nation

Blockedwww.ohlonecostanoanesselenation.org <Blockedhttp://www.ohlonecostanoanesselenation.org/>

From: [O'Day, Patrick M CIV \(US\)](mailto:O'Day.Patrick.M.CIV@usace.army.mil)
To: [Phelps, Jessica L CIV \(US\)](mailto:Phelps.Jessica.L.CIV@usace.army.mil)
Subject: FW: [Non-DoD Source] Re: Pajaro Flood Risk Management Project
Date: Tuesday, October 9, 2018 1:35:30 PM

-----Original Message-----

From: Val Lopez [<mailto:vlopez@amahmutsun.org>]
Sent: Sunday, May 6, 2018 7:24 PM
To: O'Day, Patrick M CIV (US) <Patrick.M.O'Day@usace.army.mil>
Subject: [Non-DoD Source] Re: Pajaro Flood Risk Management Project

I believe we're ok with this agreement, however I'd like to make sure I fully understand it. Can you pls give me a call so we can discuss?

Thank you,

Valentin Lopez, Chair
Amah Mutsun Tribal Band
916-743-5833

On Thu, May 3, 2018 at 7:29 AM, O'Day, Patrick M CIV (US) <Patrick.M.O'Day@usace.army.mil> <<mailto:Patrick.M.O'Day@usace.army.mil>> > wrote:

Dear Chairperson Lopez

I am writing to in regards to the Pajaro Flood Risk Management Project and to follow up with you regarding the Draft Programmatic Agreement (PA) that was mailed to you on 18 April 2018. This PA guide the implementation of, and adherence to, the Section 106 process and defines the roles of the different project proponents. We respectfully request your comments on the draft PA and any information you might have regarding the project's Area of Potential Effect. IF you have any questions or need additional information please do not hesitate email or to call me at (916) 557-7028. I have attached a PDF copy of the PA for your convenience. Thank you,

Sincerely,

Patrick O'Day

Patrick O'Day, PhD
Archaeologist
US Army Corps of Engineers
1325 J Street
Sacramento, CA 95814-2922
ph. 916-557-7028
Patrick.M.O'Day@usace.army.mil <<mailto:Patrick.M.O%27Day@usace.army.mil>>