

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
THE TORRES MARTINEZ DESERT CAHUILLA INDIANS  
REGARDING  
COMPLIANCE WITH  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE SALTON SEA MANAGEMENT PROGRAM, 10-YEAR PLAN PROJECTS  
IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**WHEREAS**, the U.S. Army Corps of Engineers, Los Angeles District (Corps), regulates the discharge of dredged or fill material into waters of the United States (WOTUS) pursuant to section 404 of the Clean Water Act (CWA) of 1972, as amended (33 U.S.C. § 1344); and

**WHEREAS**, the California Natural Resources Agency (CNRA), Department of Water Resources (DWR), and the California Department of Fish and Wildlife (CDFW) (collectively “SSMP State Team”) have developed the Salton Sea Management Program 10-Year Plan (SSMP 10-Year Plan), the goal of which is implementation of a coordinated set of interconnected habitat restoration and dust suppression projects (hereafter referred to as “Planned Project(s)” and cumulatively/collectively the Undertaking) that would be constructed over the next 10 years and would cumulatively cover approximately 30,000 acres of recently exposed or projected to be exposed lakebed along the shoreline of the Salton Sea in Riverside and Imperial Counties, California; and

**WHEREAS**, the Corps and the SSMP State Team have evaluated all of the activities/components that would comprise the Planned Projects (Appendix A) and have determined that they would all result in the discharge of dredged and/or fill material into wetlands or other WOTUS and would, therefore, require authorization from the Corps pursuant to section 404 of the CWA; and

**WHEREAS**, the SSMP State Team has applied for a Department of Army (DA) permit from the Corps to cover the list of categories of activities proposed for authorization that would occur under the SSMP 10-Year Plan (Appendix A) and establish Letter of Permission (LOP) procedures the Corps would follow for each of the Planned Projects as they are designed and implemented by the SSMP State Team; and

**WHEREAS**, implementation of the Planned Projects by the SSMP State Team may also require authorizations, approvals, or funding from five other federal agencies: U.S. Fish and Wildlife

Service (USFWS), U.S. Bureau of Land Management (BLM), U.S. Department of Agriculture (USDA)-Natural Resources Conservation Service (NRCS), Bureau of Indian Affairs (BIA), and the U.S. Bureau of Reclamation (Reclamation) (hereafter, individually, a “Cooperating Agency” and, collectively, “Cooperating Agencies”); and

**WHEREAS**, the Corps and Cooperating Agencies have determined that the Planned Projects that may be carried out under the SSMP 10-Year Plan will include activities which have the potential to affect historic properties, which are properties listed in or eligible for inclusion in the National Register of Historic Places (NRHP), thus making the Undertaking subject to review under Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. §§ 300101 et seq.)(hereinafter “Section 106”) and its implementing regulations, “Protection of Historic Properties” (36 C.F.R. Part 800) by federal agencies that sponsor such projects, or provide authorizations, approvals, funding, or other assistance required or requested for support of such projects; and

**WHEREAS**, the SSMP State Team has requested that the Corps and the Cooperating Agencies develop expedited review procedures for compliance with Section 106 to accommodate implementation of their SSMP 10-Year Plan, and the Corps and Cooperating Agencies have determined that the development of a Programmatic Agreement (PA) pursuant to 36 C.F.R. § 800.14(b)(2) would achieve this goal and facilitate coordination among the Corps, Cooperating Agencies, and Consulting Parties (defined below) for the Section 106 review of the Undertaking as appropriate; and

**WHEREAS**, the Corps has the most recurrent federal nexus associated with the implementation of the Planned Projects, and therefore, the Cooperating Agencies have designated the Corps as the lead federal agency (LFA) for compliance with Section 106, pursuant to 36 C.F.R. § 800.2(a)(2), and the Corps shall therefore be acting on behalf of the Cooperating Agencies and fulfilling their collective responsibilities under Section 106; and

**WHEREAS**, the Corps, in consultation with the California State Historic Preservation Officer (SHPO) and with input from other Consulting Parties, has defined the area of potential effects (APE) as the approximate 64,000-acre planning area where the approximately 30,000 acres of Planned Projects may occur, including access routes and staging areas (Appendix A); and

**WHEREAS**, the Corps has conducted initial historic property identification efforts including record searches covering over 106,700 acres (which includes most of the APE and areas beyond the APE within a one-mile buffer around various areas where Planned Projects would be placed) at the appropriate California Historical Resources Information System Information Centers and has requested the assistance of Indian tribes as defined at 36 C.F.R. § 800.16(m), and hereafter referred to as Federally recognized Tribes, as well as non-Federally recognized Tribes in identifying properties of religious and cultural significance within the APE; and

**WHEREAS**, the Corps has consulted with the SHPO, pursuant to 36 C.F.R. §§ 800.4(b)(2) and 800.14(b)(2), about this Undertaking, and the Signatories have determined that a phased approach for compliance with Section 106 is necessary for the Undertaking because all effects of the Undertaking on historic properties within the APE cannot be known prior to the approval of the expenditure of any Federal funds on the Undertaking or prior to the issuance of any license (36 C.F.R. §§ 800.1(c) and 800.14(b)(1)(v)); and

**WHEREAS**, the Corps has consulted with the Advisory Council on Historic Preservation (ACHP) per 36 C.F.R. § 800.6(a)(1)(i)(C) about this Undertaking, and the ACHP participated in the development of this PA, and the ACHP is a Signatory of this PA; and

**WHEREAS**, the APE includes Tribal Trust land and Allotted Trust lands, and the BIA may need to process rights-of-way agreements for any Planned Project on those lands, and BIA has designated the Corps as the LFA; and the Corps, as designated LFA for the Undertaking, shall consult with the BIA regarding historic property identification efforts, determinations of eligibility, and assessment of effects, and has invited the BIA to be an Invited Signatory; and

**WHEREAS**, the BLM manages 1,876 acres of land within the APE and will need to issue rights-of-way, easements, or other use authorizations for any Planned Project on lands under their jurisdiction, and BLM has designated the Corps as the LFA; and the Corps, as designated LFA for the Undertaking, shall consult with the BLM regarding historic property identification efforts, determinations of eligibility, and assessment of effects, and has invited the BLM to be an Invited Signatory; and

**WHEREAS**, Reclamation manages 5,928 acres of land within the APE and would need to issue rights-of-way, easements, or other use authorizations for any Planned Project on lands under their jurisdiction, and Reclamation has designated the Corps as the LFA; and the Corps, as designated LFA for the Undertaking, shall consult with Reclamation regarding historic property identification efforts, determinations of eligibility, and assessment of effects, and has invited Reclamation to be an Invited Signatory; and

**WHEREAS**, the APE includes 1,567 acres of land that are managed by the USFWS as part of the Sonny Bono Salton Sea National Wildlife Refuge (Refuge) and therefore, USFWS would need to issue special use permits and/or determinations that any Planned Project is compatible with the purpose for which the Refuge was established, and USFWS has designated the Corps as the LFA; and the Corps, as designated LFA for the Undertaking, shall consult with USFWS regarding historic property identification efforts, determinations of eligibility, and assessment of effects, and has invited USFWS to be an Invited Signatory; and

**WHEREAS**, NRCS may provide technical and funding assistance for any Planned Project under the authority of the USDA financial assistance programs implemented by NRCS, and NRCS has designated the Corps as the LFA; and the Corps, as designated LFA for the Undertaking, shall consult with NRCS regarding historic property identification efforts, determinations of

eligibility, and assessment of effects, and has, therefore, invited NRCS to be an Invited Signatory; and

WHEREAS, any Cooperating Agency that has designated the Corps as LFA for compliance with Section 106, pursuant to 36 C.F.R. § 800.2(a)(2), and has been invited to be an Invited Signatory does not have to sign the PA in order to be covered by the PA for its responsibilities under Section 106 for this Undertaking and any associated Planned Projects covered by this PA; and

**WHEREAS**, the APE includes the ancestral and reservation lands of the Torres Martinez Desert Cahuilla Indians (Torres Martinez) and the Torres Martinez have a traditional and enduring connection to the Salton Sea, and pursuant to 36 C.F.R. § 800.2(c)(2)(i)(B), the Torres Martinez have not assumed the responsibilities of the SHPO for Section 106 on tribal lands, and consequently, the Corps shall consult with the Torres Martinez regarding any Planned Project occurring on or affecting historic properties on tribal lands, and the Torres Martinez shall have the same right to consultation and concurrence as the SHPO for those Planned Projects on their tribal lands, and the Torres Martinez are a Signatory to this PA; and

**WHEREAS**, pursuant to the special relationship between the Federal government and Indian tribes, and Section 101(d)(6)(B) of the NHPA and 36 C.F.R. § 800.2(c)(2)(ii), the Corps, as designated LFA for the Undertaking, is responsible for government-to-government consultation with Federally recognized Tribes and shall include the Cooperating Agencies as appropriate; and

**WHEREAS**, the Corps has invited the following Federally recognized Tribes to consult on the Undertaking and participate in the development of this PA: the Agua Caliente Band of Cahuilla Indians, the Augustine Band of Cahuilla Indians, the Barona Band of Mission Indians, the Cabazon Band of Mission Indians, the Cahuilla Band of Mission Indians, the Campo Band of Mission Indians, the Ewiiapaayp Band of Kumeyaay Indians, the Fort Yuma Quechan Indian Tribe, the Iipay Nation of Santa Ysabel, the Inaja-Cosmit Band of Indians, Jamul Indian Village, the La Posta Band of Diegueno Mission Indians, the Los Coyotes Band of Cahuilla and Cupeño Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Mesa Grande Band of Mission Indians, the Morongo Band of Mission Indians, the Ramona Band of Cahuilla Indians, the San Pasqual Band of Diegueno Mission Indians, the Santa Rosa Band of Cahuilla Indians, the Soboba Band of Luiseno Indians, the Sycuan Band of the Kumeyaay Nation, the Torres Martinez, the Twenty-Nine Palms Band of Mission Indians, and the Viejas Band of Kumeyaay Indians; and

**WHEREAS**, the Agua Caliente Band of Cahuilla Indians, Campo Band of Mission Indians, Fort Yuma Quechan Indian Tribe, Morongo Band of Mission Indians, and the Viejas Band of Kumeyaay Indians have agreed to consult on this Undertaking, participate in the development of this PA, and the Corps has invited these Federally recognized Tribes to concur in this PA; and

**WHEREAS**, the Corps has also invited the non-Federally recognized Tribe, Kwaaymii Laguna Band of Mission Indians, to consult on this Undertaking and participate in the development of

this PA, but they have not, as of the date of execution of this PA, agreed to consult on this Undertaking or participate in the development of this PA; and

**WHEREAS**, during tribal outreach, the Corps received a request to consult by the Comunidad Indígena Cucapah el Mayor, an indigenous community just south of the U.S.-Mexico border, approximately 70 miles from the Salton Sea, and the Corps has afforded them Consulting Party status and has invited them to participate in the development of this PA and has invited them to concur to this PA; and

**WHEREAS**, any Federally recognized Tribe or non-Federally recognized Tribe or any party that has been invited to consult on this Undertaking may concur in this PA at any time after its execution, regardless of whether they participated in the development of this PA or whether they previously declined to be a Consulting Party or concur in this PA; and

**WHEREAS**, the Corps shall continue to consult with any Federally recognized or non-Federally recognized Tribes throughout the implementation of this PA regarding effects to historic properties to which any such Tribe may attach religious and cultural significance, notwithstanding any decision by any such Tribe to decline to be a Consulting Party or to concur in the PA; and

**WHEREAS**, members of the SSMP State Team, as DA permit applicants for Planned Projects, have a direct legal and economic relationship to the Undertaking and have been invited to consult on this Undertaking pursuant to 36 C.F.R. § 800.3(f)(1) and have been invited to be Invited Signatories to this PA; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.2(d)(3), the public has been provided with information about the Undertaking and its potential for effects on historic properties through the National Environmental Policy Act (NEPA) public scoping process for the proposed LOP procedures which have included a public comment period from March 22, 2021 through April, 21, 2021; a second public comment period that corresponded with the release of the draft NEPA document from June 21 2022 through August 20, 2022; three public meetings held during the public comment period (two on July 7, 2022 and one on July 12, 2022); presentation at the EPA Regional Tribal Operations Committee meeting April 26, 2022; multiple public and community meetings held from December 2019 through August 2022 regarding the SSMP 10-Year Plan; and at the annual State of California Water Resources Control Board workshops, March 19, 2019, August 19, 2020, April 7, 2021, April 20, 2022, and May 16-17, 2023; and a thirty (30)-day public review period for the draft Programmatic Agreement from April 19, 2024 through May 20, 2024; and the public's views have been sought and considered; and

**WHEREAS**, it is the intent of the Corps, the SHPO, the ACHP, the Torres Martinez, and Cooperating Agencies to provide for uniform streamlined Section 106 compliance and to address cumulative effects to historic properties through the implementation of this PA; and

**WHEREAS**, this PA, inclusive of the appendices, specifies the processes through which the identification and evaluation, and assessment and resolution of adverse effects to historic properties for each Planned Project will occur throughout the duration of this PA; and

**WHEREAS** compliance with this PA will be included as a condition of any DA permit issued by the Corps associated with the implementation of Planned Projects;

**NOW, THEREFORE**, the Corps, Torres Martinez, ACHP, the SHPO and any Invited Signatory that executes this PA (individually a “Signatory” and collectively “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’ and Cooperating Agencies’ Section 106 responsibilities for the Undertaking.

## **STIPULATIONS**

To the extent of its legal authority, the Corps will ensure that the following stipulations are carried out when this PA is used to comply with Section 106.

### **I. DEFINITIONS**

- A. The definitions provided in 36 C.F.R. § 800.16 are applicable throughout this PA. In addition, the following definitions apply:

***Concurring Party*** – a concurring party is a Consulting Party invited to concur in the PA who has signed their concurrence in the PA but who does not have the authority to amend or terminate the PA.

***Consulting Party*** – Collectively refers to the Signatories, Federally and non-Federally recognized Tribes, including the Comunidad Indígena Cucapah el Mayor, SHPO, and all other Consulting Parties, including those who have concurred in the PA, and any additional Federally and non-Federally recognized Tribes who are later identified by the Corps as having concerns about historic properties that may be affected by the Undertaking or individuals or organizations who are later identified as having a demonstrated interest in the Undertaking.

***Cooperating Agency*** – A federal agency that has federal actions related to the Undertaking and one or more associated Planned Projects, which has designated the Corps as LFA for compliance with Section 106, pursuant to 36 C.F.R. § 800.2(a)(2), and whose responsibilities under Section 106 for the Undertaking and associated Planned Projects is covered by the Corps compliance under the terms of this PA. Such Cooperating Agencies do not have to sign the PA in order to be covered by the Corps compliance under the terms of this PA

***Dust Suppression Project*** – Dust suppression project for the SSMP 10-Year Plan refers to actions which would reduce emissions of dust from exposed lakebed at the Salton Sea. This may include water-reliant dust suppression projects which would reduce the area of exposed lakebed by creating aquatic habitat, or waterless dust suppression projects which would reduce the emissivity of exposed lakebed by creating or enhancing native upland vegetation or wetlands, applying temporary surface and/or engineered roughening, or applying soil stabilizers.

***Federal Lands*** – Any lands, other than tribal lands, where the United States holds fee title to the property.

***Habitat Restoration Project*** – Habitat restoration for the SSMP 10-Year Plan refers to construction of aquatic habitat ponds and wetlands. Depending on site characteristics, projects would be designed to include suitable shallow, mid-depth, and deep aquatic habitat to support fish and piscivorous birds. Projects could also include mudflats and permanent vegetated wetlands to support shorebird and marsh bird foraging and nesting.

***Interested Member of the Public*** – An individual or entity that is not a Consulting Party (until invited to be so) but which the LFA believes may be interested in information about the Undertaking and its effects on historic properties based on, for example, the LFA’s prior experience or contact with the individual or entity, the recommendations of a SHPO or Tribal Historic Preservation Officer (THPO), affected Indian tribes, or the individual or entity’s own initiative in providing its views.

***Invited Signatory*** – Invited Signatories are parties that have specific responsibilities as defined in this PA. Those Invited Signatories who sign this PA have the same rights regarding seeking amendment or termination of this PA as a Signatory, but whose signatures are not required for execution of the PA.

***Non-Federally Recognized Tribe*** – an organization of people or groups that identify as Indian tribes but are not officially recognized by the federal government.

***Planned Project*** – A separable and functionally discrete habitat restoration project and/or dust suppression project constructed around the Salton Sea that is consistent with the State of California’s SSMP 10-Year Plan.

***Planned Project APE*** – the geographic area where a Planned Project may directly or indirectly cause alterations in the character or use of historic properties. In defining the Planned Project APE, the Corps will consider potential direct, indirect, and cumulative effects to historic properties and all aspects of integrity, including their associated settings as applicable.

***Planned Project Consulting Parties***- Planned Project Consulting Parties are a subset of Consulting Parties and are those parties whom the Corps has identified as having a consultive role for a Planned Project and would include at a minimum any Cooperating Agency who has a federal action related to the specific planned project and has designated the Corps as LFA,, the SSMP State Team, and any Federally and non-Federally recognized Tribes, including the Comunidad Indígena Cucapah el Mayor, that attach religious and cultural significance to historic properties that may be affected by a Planned Project(s). The term Planned Project Consulting Parties does not include the SHPO, ACHP, Torres Martinez, or the Corps.

***Signatory or Signatories*** – Parties that have the sole authority to execute, amend or terminate this PA. Signatories to this PA are the SHPO, ACHP, and the Corps. An Invited Signatory becomes a Signatory once they have executed this PA.

***Treatment*** – Actions taken by a Federal agency to mitigate or resolve adverse effects on historic properties.

- B. Acronyms can be found in Appendix B.
- C. All days are calendar days unless otherwise noted.

## **II. PURPOSE AND APPLICABILITY**

- A. The purpose of this PA is to streamline the Section 106 review process by: allowing reliance on prior identification of historic properties; identifying specific categories of activities that have little or no potential to affect historic properties which may be exempted from further review (Appendix C); identifying categories of cultural resources that the Corps and SHPO in consultation with the Consulting Parties have jointly determined are not eligible for listing on the NRHP and do not require additional consultation (Appendix D); and by eliminating consultations with the SHPO on Planned Projects that culminate in “No Historic Properties Affected” or “No Adverse Effect” determinations when applying standard avoidance measures as described in Stipulation VI.
- B. Applicability of this PA
  1. This PA shall apply to Planned Project(s) that qualify for LOP procedures as determined by the Corps.
  2. This PA shall not apply to Planned Projects that occur on or affect Tribal lands, as defined in 36 C.F.R § 800.16(x), belonging to the Torres Martinez until such time that the PA has either been executed by the Torres Martinez or the Torres Martinez notifies the Corps in writing that they are waiving their rights to execute this PA. If

the Torres Martinez executes this PA, the Torres Martinez shall have the same consultation and concurrence rights as SHPO with respect to Planned Projects proposed on Torres Martinez Tribal land. With respect to such Planned Projects on Torres Martinez Tribal land, all references to SHPO in this PA shall include the Torres Martinez. If the Torres Martinez decline to execute or waive their rights to execute this PA, the Corps shall follow the procedures and timelines established in 36 C.F.R. Part 800 for any Planned Projects occurring on Torres Martinez Tribal lands and shall afford the designated tribal representative the same rights of consultation and concurrence that a THPO would be given. If the Torres Martinez decide to withdraw from the PA, the PA would no longer apply to Tribal land belonging to the Torres Martinez. The implementation this PA would remain in effect pursuant to 36 C.F.R. § 800.14(b)(2).

### **III. AGENCY ROLES, RESPONSIBILITIES, AND PROFESSIONAL QUALIFICATIONS**

- A. All actions prescribed by this PA that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms, or other records shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's professional qualification standard (PQS) for the appropriate discipline (48 Fed. Reg. 44739 dated September 29, 1983). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this Stipulation from using the services of persons who do not meet the PQS, so long as the work of such persons is the responsibility of someone who meets the PQS, and such responsibility is evidenced by the signature of the responsible person.
- B. The Corps is responsible for administering this PA and that Signatories carry out their respective responsibilities. The Corps shall maintain staff who meet the PQS for the appropriate discipline to review each Planned Project. Only such staff shall apply the provisions of Appendices C and D.
- C. For activities on federal, state, or private lands, the SSMP State Team will be responsible for ensuring that they or their consultants apply for and receive appropriate rights of entry and permits to conduct historic property identification efforts, as well as to conduct any excavation or to remove any material culture or environmental samples, prior to initiating any investigations.
- D. Additional Federal agencies who are not parties to this PA but who may later have a role in a Planned Project may designate the Corps as LFA in accordance with 36 C.F.R. § 800.2(a)(2) to fulfill their responsibilities, provided that the additional Federal agency provides a designation request letter to the Corps and the Corps accepts the designation in writing, which the Corps shall in turn disseminate to the Consulting Parties.

- E. Should an additional Federal agency or other Consulting Party request in writing to participate as an Invited Signatory, the Corps shall notify the Signatories and consider the request to participate. Should the Signatories agree to the request, the PA shall be amended following the procedures in Stipulation XII.

#### **IV. AREA OF POTENTIAL EFFECTS**

- A. The Corps has determined and documented the APE for the Undertaking in consultation with the SHPO in accordance with 36 C.F.R. § 800.4(a). A map of the APE is attached as Appendix A. The APE encompasses an area sufficient to accommodate all of the proposed Undertaking components (Planned Projects). The APE is defined as the 64,000-acre planning area and includes the direct effect area where the approximately 30,000 acres of Planned Projects may occur, including access routes and staging, and the areas where indirect and cumulative effects may occur.
- B. If the Corps determines that a change in the APE is appropriate, either on its own or on the suggestion of a Signatory, Consulting Party or others, the Corps shall provide the same notice and opportunity to consult as described in Stipulation XII. After consideration of input, the Corps shall inform the Signatories, Consulting Parties and the public as to the final revised APE.
- C. For each Planned Project, the Corps shall define and document the Planned Project APE and consult with the SHPO on their determination through the procedures in Stipulation V.

#### **V. SECTION 106 REVIEW PROCEDURES FOR PLANNED PROJECTS**

- A. Initiation of Section 106 Process
  - 1. The Corps, in coordination with the SSMP State Team, shall make a reasonable and good faith effort to identify historic properties within the Planned Project APE. The Corps will ensure that identification efforts for historic properties are conducted or directed by PQS cultural resource consultant staff and reviewed by PQS Corps staff. The Corps shall ensure that all work and documentation undertaken to satisfy the terms of this PA is conducted in accordance with the SHPO Guidelines for Archaeological Research Design (1991) and Guidelines and Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (1990); and the ACHP's Section 106 Archaeology Guidance (2009); and the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Fed. Reg. 44716-44742), and 36 C.F.R. § 800.4 Identification of Historic Properties, and the Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin 38 (in consultation with Federally or non-Federally recognized

Tribes), to adequately identify historic properties that may be affected by Planned Projects, which may include properties of religious and cultural significance to Indian tribes.

2. If the Corps determines a Planned Project has no potential to cause an effect to historic properties, as defined in 36 C.F.R. § 800.3(a)(1), or if an exemption applies to the Planned Project as defined in Appendix C, the Corps shall document its determination in the PA annual report, pursuant to Stipulation XVII. If no potential effect or an exemption applies, the Corps' Section 106 obligation is fulfilled under this PA with respect to that Planned Project.
3. If the Corps determines a Planned Project has the potential to affect historic properties and no exemption applies, the Corps shall conduct a review of the Planned Project pursuant to Stipulation V.B.

#### B. Identification of Historic Properties

1. During pre-application coordination with the SSMP State Team or upon receiving an application for a DA permit associated with a Planned Project, the Corps will determine the Planned Project APE and level of effort (LOE) for historic properties identification, pursuant to 36 C.F.R. § 800.4(a) and (b). The Corps shall document the proposed Planned Project APE on a map and describe the Planned Project APE and proposed LOE on a Historic Property Identification Needs (HPIN) checklist. The purpose of the HPIN checklist is to provide information regarding the Planned Project, the Planned Project APE, proposed historic property identification LOE, and known or likely presence of historic properties. An HPIN checklist may include documents pertaining to the identification of historic properties, and consultation with Tribes and Planned Project Consulting Parties and any received comments.
2. If the Corps determines that horizontal and vertical extent of the Planned Project APE was appropriately assessed for the presence of historic properties (e.g., field surveys, inventory reports), and the Corps previously consulted with the SHPO and the Planned Project Consulting Parties with regard to those prior efforts, the Corps will document and describe those prior efforts in the HPIN checklist. If the Corps determines that the previous LOE was appropriate for the Planned Project, the Corps will also include an explanation in the HPIN checklist of why reliance on the prior identification efforts is appropriate for the Planned Project, if historic properties are absent or present within the Planned Project APE, and whether the SHPO had previously concurred in any eligibility determinations.
3. The Corps shall distribute the HPIN checklist to the Planned Project Consulting Parties and SHPO for a fifteen (15) day review and comment period.

4. Once the Corps receives, considers, and addresses all comments on the HPIN checklist from the Planned Project Consulting Parties and SHPO, the Corps will provide a notice of its Planned Project APE and LOE determination to the Planned Project Consulting Parties and SHPO. The notice will include a summary of the comments received and the Corps' reasons for its determination.
5. By letter, the Corps shall initiate consultation with the appropriate Federally or non-Federally recognized Tribes for the identification of historic properties of religious and cultural significance to Indian tribes for the Planned Project APE (36 C.F.R. § 800.2(c)(2)(ii) and (B)(ii) and 36 C.F.R. § 800.4(a)(4) and (b)). The Corps will continue to consult with the appropriate Federally or non-Federally recognized Tribes throughout the LOP review process.
6. If previously conducted historic properties identification efforts within the Planned Project APE are sufficient, and the SHPO did not object to the reliance on previous identification efforts, and no additional identification efforts are warranted, and all resources have previously been evaluated (and SHPO previously concurred on eligibility) in the Planned Project APE, the Corps shall proceed pursuant to Stipulation V.C.(2)(a).
7. If through the HPIN consultation process, it has been determined that additional historic property identification efforts would be required, including the need to address incomplete prior evaluations within the Planned Project APE, the Corps and SSMP State Team shall proceed to Stipulation V.B.8.
8. The SSMP State Team will carry out the LOE identified in the HPIN checklist for the Planned Project. The results of the historic properties identification effort (i.e., technical inventory report) will be submitted to both the Planned Project Federal Land management agency and the Corps. After receiving the technical inventory report, the Planned Project Federal Land management agency will have thirty (30) days to make recommendations to the Corps regarding eligibility and effects. Once the Corps receives, considers, and addresses all comments regarding eligibility and effects, the Corps will proceed pursuant to Stipulation V.C.
9. All HPIN checklists will be included in the PA annual report, pursuant to Stipulation XVII.

C. National Register Eligibility Determination and Finding of No Historic Property Affected

1. Upon completion of the historic property identification efforts including the Corps' tribal consultations pursuant to 36 C.F.R. § 800.2(c)(B)(ii) and 36 C.F.R. § 800.4(a)(4) and (b), the Corps shall either determine if any resource is among those

- classes of resources identified in Appendix D that do not warrant further evaluation, or, in consultation with the Planned Project Consulting Parties and SHPO, will determine National Register of Historic Places (NRHP) eligibility pursuant to 36 C.F.R. § 800.4(c).
- a. Resources that were identified in the Planned Project APE that are among the classes determined to not warrant further evaluation will be documented as provided in Appendix D.
  - b. For all other resources identified in the Planned Project APE, the Corps shall evaluate the NRHP eligibility in accordance with the criteria set forth in 36 C.F.R. part 60, acknowledging that Federally recognized and Non-Federally recognized Tribes possess special expertise in assessing the eligibility of historic properties that may be important to their communities. The Corps shall transmit its determinations of eligibility and supporting documentation to the SHPO and Planned Project Consulting Parties for a 30-day review period. The Corps shall also provide a summary of the views and opinions of the SHPO and Planned Project Consulting Parties on the eligibility of any resources within the Planned Project APE that the Corps received.
  - c. Any disagreement with the Corps' eligibility determination shall be resolved pursuant to the process in 36 C.F.R. § 800.4(c)(2).
2. For all properties identified within the Planned Project APE that are determined to be NRHP eligible, the Corps PQS shall assess potential effects of the Planned Project(s) to the historic properties consistent with 36 C.F.R. § 800.4(d) in accordance with the criteria established at 36 C.F.R. § 800.5(a)(1) and (2)(i)-(vii).
- a. **Reliance on Previous Identification Efforts and Determinations of Eligibility.** If the Corps relies on previous identification efforts and determinations of non-eligibility (per Stipulation V.B.), and the Corps makes a finding of no historic properties affected, the determination is documented in the PA annual report, pursuant to Stipulation XVII, and the Corps' Section 106 obligation is fulfilled under this PA with respect to the specific Planned Project(s).
  - b. **No Historic Properties Affected.** If the Corps determines there are no historic properties in the Planned Project APE or there are historic properties present, but the Planned Project(s) will have no effect upon them, the findings will be submitted to the SHPO and Planned Project Consulting Parties for a thirty (30)-day review. If the SHPO or the ACHP have joined the consultation and do not object, the Corps' Section 106 obligation with respect to that Planned Project(s) is fulfilled and the finding is documented in the PA annual report, pursuant to

Stipulation XVII. If SHPO or the ACHP has joined the consultation, and objects with the Corps' finding, the Corps shall follow the procedures in 36 C.F.R. § 800.4(d).

- c. **Historic Properties Affected.** If the Corps finds that historic properties identified within the Planned Project APE may be affected, the eligibility and effects findings are submitted to the Planned Project Consulting Parties and SHPO, pursuant to Stipulation V.D.

#### D. Assessment of Adverse Effects

##### 1. No Adverse Effect

- a. If the Corps, in consultation with the SHPO, has previously determined that all the historic properties in the Planned Project APE are solely eligible under NRHP Criterion D (as defined in Stipulation VII.E) and such historic properties can be avoided with the standard avoidance measures detailed in Stipulation VI., the Corps will make a determination of no adverse effect via standard avoidance measures. The Corps' Section 106 obligation is fulfilled under this PA with respect to that Planned Project(s). The Corps will document these actions in the PA annual report, pursuant to Stipulation XVII.
- b. If the Corps PQS finds that the Planned Project(s) would result in no adverse effect, but, for historic properties that are only eligible under Criterion D the conditions of the no adverse effect deviate from the standard avoidance measures in Stipulation VI, the Corps shall submit its no adverse effect finding to the Planned Project Consulting Parties and SHPO, pursuant to 36 C.F.R. §§ 800.5(b) and 800.5(c) for thirty (30) days to review. The Corps may proceed after the close of the thirty (30)-day review period if the SHPO has agreed with the finding and no Planned Project Consulting Party has objected. The Corps' Section 106 obligation is fulfilled under this PA with respect to that Planned Project(s) and the Corps will document in the PA annual report, pursuant to Stipulation XVII.
  - i. If within the thirty (30)-day review period the SHPO or Planned Project Consulting Parties notifies the Corps in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the Corps shall consult with the objecting party, SHPO, and other appropriate Planned Project Consulting Parties to resolve the disagreement. If the objection is not resolved, the Corps will request the ACHP to review the finding pursuant to 36 C.F.R. § 800.5 (c)(3)(i) and (c)(3)(ii). The Corps shall also concurrently notify SHPO and Planned Project Consulting Parties that such a submission to ACHP has been made.

- ii. If within the thirty (30)-day review period the ACHP provides the Corps with a written opinion objecting to the finding, the Corps shall proceed according to 36 C.F.R. § 800.5(c)(3)(ii).
- iii. The Corps agrees to seek the concurrence from the Planned Project Consulting Parties. If any Planned Project Consulting Party disagrees with the finding, it may within the thirty (30)-day review specify the reasons for disagreeing with the finding and request the ACHP to review and object to the finding pursuant to 36 C.F.R. § 800.5(c)(2)(ii).

## **2. Adverse Effect**

If the Corps PQS, after applying the criteria of adverse effect specified in 36 C.F.R. § 800.5(a), finds that the Planned Project(s) may affect those characteristics of a historic property that qualify it for listing in the NRHP, the Corps shall notify the Planned Project Consulting Parties of its findings and shall begin consultation to resolve the adverse effects pursuant to 36 C.F.R. § 800.6 and Stipulation VII.

### **E. Concurrent Consultation on Eligibility and Effects**

1. The Corps may combine consultations on eligibility and effects determinations into one letter when appropriate. The Corps shall make it clear in their letter that they are requesting a combined consultation and provide a timeframe for the review. SHPO and any Planned Project Consulting Party shall consider the request for concurrent consultation in good faith. If any party declines the request for concurrent consultation, or requests additional time for review of the proposed determinations, that party shall inform the Corps and all other parties of the reasons for not agreeing to a concurrent process. If a party declines to consent to concurrent consultation, it shall provide any comments on the eligibility determination within the initial thirty (30)-day review timeframe.
2. Disagreement regarding an eligibility determination shall be resolved pursuant to the process in 36 C.F.R. § 800.4(c)(2). Disagreement regarding an effects determination shall be resolved pursuant to the process in 36 C.F.R. § 800.5(c).

## **VI. STANDARD AVOIDANCE MEASURES**

If the Corps, in consultation with the SHPO, has determined that a historic property is only eligible under Criterion D (and is not eligible under Criteria A, B, or C), the Corps shall investigate the feasibility of avoiding adverse effects to the historic property. The Corps, in coordination with the SSMP State Team, will determine if the adverse effects to the historic

property can be entirely avoided, typically through redesign or modification of the Planned Project. Avoidance means that no activities, unless specifically identified in this PA, will occur within a historic property's identified boundaries, including any defined buffer zones. If the Corps determines that avoidance of the adverse effect(s) is possible, the Corps shall ensure the following measures are carried out:

- A. The Corps will ensure to clearly delineate the historic property(ies) boundary(ies), including a minimum 100-foot buffer zone, prior to issuing a notice to proceed for any Planned Project that has the potential to affect historic properties.
  1. If the historic property is bisected by a graded and maintained or paved road that would be used for access to the Planned Project APE, the SSMP State Team's cultural resource consultant may place the boundary fencing along the edge of the graded and maintained or paved road without consideration of the 100-foot buffer.
  2. If the Planned Project has been redesigned or modified to avoid adverse effects and the historic property is located more than 200 feet from any proposed ground disturbing activities, including staging and storage areas, fencing will not be required.
  3. If the historic property is located along the edge of the Planned Project APE, only those areas that border the proposed construction activities, including the 100-foot buffer area, would be demarcated. The entire site would not be demarcated to avoid calling undue attention to the historic property.
- B. Historic property boundaries including appropriate buffer zones will be delineated with coded flagging and/or other effective marking such as orange barrier fencing. The Corps will prohibit activities within historic property boundaries except for travel on graded and maintained or paved roads when the Corps PQS specialist determines that such use is consistent with the terms of the PA and would not affect the historic property. The Corps will ensure all flagging and other markings are maintained throughout implementation of the Planned Project (as appropriate) near the historic property and removed once the Planned Project has been completed as not to draw prolonged attention to the historic property.
- C. The Corps will convey historic property location and boundary marking information to appropriate PQS qualified SSMP State Team representatives or Planned Project Consulting Parties responsible for implementation of the Planned Project so those individuals can incorporate pertinent information into planning and implementation documents such as contracts, stipulations, or permits. On any avoidance maps, the historic property avoidance area will be identified as either an environmentally sensitive area or as a property boundary to avoid disclosing the location of a historic property. Any parties who receive historic property location information may be required to sign a confidentiality agreement.

- D. The Corps, through the implementation of permit conditions, shall ensure that the SSMP State Team provides cultural resource sensitivity training to construction personnel regarding avoidance requirements. The Corps shall invite the appropriate Federally or non-Federally recognized Tribes to participate in the training to discuss or provide text from a tribal cultural heritage perspective regarding tribal cultural resources.
- E. For historic properties where the site is reasonably expected to contain subsurface elements, the Corps shall ensure that an archaeological and tribal monitor(s) are on site to monitor ground disturbing activities within 200 feet of the edge of the buffer zone.

## **VII. RESOLUTION OF ADVERSE EFFECTS TO HISTORIC PROPERTIES**

- A. To the extent practicable, the Corps shall seek ways to avoid and minimize adverse effects to historic properties. If adverse effects to historic properties cannot be avoided by a Planned Project, the Corps shall prepare a Historic Properties Treatment Plan (HPTP) which shall outline how the adverse effects for the Planned Project will be resolved. The HPTP will be executed, and field work associated with the HPTP will be completed prior to the issuance of a notice to proceed for the Planned Project.
- B. The Corps will develop the HPTP in consultation with the Planned Project Consulting Parties and the SHPO and tailor treatment efforts to the types and degree of anticipated Planned Project effects. Mitigation shall address the loss of location, design, setting, materials, feeling, association and workmanship.
- C. If the HPTP specifically addresses mitigation for adverse effects to historic properties to which Federally or non-Federally recognized Tribes attach religious or cultural significance, the Corps shall consult with the appropriate Tribe on the distribution of the draft HPTP to the Planned Project Consulting Parties. Following that consultation, the Corps shall submit the HPTP to the Planned Project Consulting Parties for a thirty (30) day review, subject to the confidentiality provisions of 36 C.F.R. § 800.11(c).
- D. After the Federally or non-Federally recognized Tribes and Planned Project Consulting Parties' thirty (30)-day review period, the Corps shall submit the HPTP to the SHPO. The SHPO shall have a thirty (30)-day review period. If the SHPO does not concur with the HPTP, the Corps shall consult with the SHPO in an attempt to resolve the dispute. If an agreement on the HPTP cannot be reached within thirty (30) days, or as extended through agreement by the Signatories, resolution of the issue may proceed by following the dispute resolution process in Stipulation XIII or termination process in Stipulation XVIII.
- E. The Corps shall ensure that the Planned Project HPTPs are tailored to the specific historic property types within the Planned Project APE and include the following framework, for consistency:

1. A description of the Planned Project(s).
  2. A map of the historic property(ies) locations, situating them in relationship to the Planned Project(s).
  3. A description of the historic property(ies) to which the HPTP applies, including associated primary number(s) and Trinomial(s) or other identifying names.
  4. The results of previous research relevant to the historic property(ies).
  5. A discussion of each historic property's effects assessment and characteristics that convey its significance criteria, themes, and period of significance for eligibility to the NRHP; and SHPO concurrence of the determination of eligibility.
  6. Information regarding the loss of values of the historic property as a result of the Planned Project.
    - a. Include a statement of the significant values of the historic property that would be lost.
    - b. For archaeological resources, include information regarding a Phase II research design or Phase III data recovery research design that evidences a knowledge of the resource structure and content.
  7. The way(s) in which the historic property(ies) will be affected by the Planned Project.
  8. A discussion regarding how the proposed resolution of adverse effects for each historic property type within the Planned Project APE.
  9. Protocols for the treatment of human remains pursuant to Stipulation XI.
  10. A Planned Project suspension/termination protocol that stipulates the procedures to be followed if the Planned Project is halted during fieldwork conducted under the HPTP, pursuant to this PA.
  11. The timeline for the preparation of deliverables, review process and final distribution, as well as timelines agreed to in this PA.
- F. If it is determined an HPTP requires amendment, the Corps, in consultation with SHPO and Planned Project Consulting Parties, shall use the following process:

1. The Corps shall notify the SHPO and Planned Project Consulting Parties of any

- proposed change in the HPTP with a description of the proposed change. The SHPO and Planned Project Consulting Parties shall then have fifteen (15) days from receipt, or as extended through agreement by the Signatories, to comment on the modified HPTP.
2. Once the Corps receives, considers, and addresses all comments regarding the modified HPTP, the Corps shall notify the SHPO and include a summary of the comments received for a ten (10)-day review period.
  3. If the Signatories agree to the proposal, then the Corps will distribute copies to the SHPO and Planned Project Consulting Parties within thirty (30) days of the day upon which agreement to the modification was reached, or as extended by the Signatories, or the close of the review period. The Corps will keep copies of the description on file for its administrative record.
  4. If the Signatories cannot agree to a proposal for the modification of the HPTP within thirty (30) days, or as extended through agreement by the Signatories, then they will resolve the dispute in accordance with Stipulation XIII below.
- G. All finalized HPTPs will be included in the appropriate Corps files and included in the PA annual report, pursuant to Stipulation XVII.

## **VIII. CUMULATIVE EFFECTS**

- A. The Corps shall consider cumulative effects to historic properties as part of its findings of effect for each Planned Project and will resolve any adverse effects through the procedures outlined in Stipulation VII. To ensure that the Corps has effectively addressed cumulative effects for the entire Undertaking, in addition to its consideration of cumulative effects in the context of each Planned Project, the Corps shall conduct an assessment of cumulative effects on a yearly basis as part of the PA annual report and shall include cumulative effects on the agenda at the annual meeting, pursuant to Stipulation XVII.
- B. Within one year in advance of the expiration of this PA, the Corps shall review all the Planned Projects that have occurred and any past, present, and reasonably foreseeable future actions that have or will occur at the Salton Sea within the APE and determine if the Undertaking has had an adverse cumulative effect on historic properties and, if it has, if those adverse effects have been adequately resolved through previous mitigation that occurred as part of this PA. If through the consultation process, the Corps finds that the Undertaking has resulted in previously unmitigated adverse effects, the Corps will follow the procedures in Stipulation VII to resolve the residual adverse effects.

## IX. CURATION STANDARDS

### A. Collections from Federal Lands

The Corps shall ensure curation is conducted in accordance with 36 C.F.R. Part 79, except that Native American human remains and cultural items determined in consultation with Indian tribe(s) to be associated funerary objects, sacred objects and objects of cultural patrimony, as defined by the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001 et seq.), shall be prepared for disposition pursuant to a NAGPRA Plan of Action and any other requirements agreed to by the Planned Project Consulting Parties. All materials collected will be maintained in accordance with 36 C.F.R. Part 79 or 43 C.F.R. Part 10, until the final treatment report is finalized, and collections are curated. The Corps shall provide documentation of curation and associated reports to the Planned Project Consulting Parties and SHPO within sixty (60) days of acceptance of the relevant documents.

### B. Collections from Non-Federal Lands

The Corps shall ensure curation is conducted by the SSMP State Team in accordance with the State of California's Guidelines for the Curation of Archeological Collections (State Historical Resources Commission, Department of Parks and Recreation 1993), with the consent of the private property owner. If a private property owner does not choose to allow for curation of cultural material, the Corps shall document the return of the material to the private property owner and submit copies of this documentation to the Planned Project Consulting Parties specified in the HPTP and SHPO. Native American human remains, and associated items shall not be curated but addressed in consultation with the Most Likely Descendent(s) (MLD) designated by California's Native American Heritage Commission (NAHC) pursuant to Public Resources Code section 5097.98.

## X. PROGRAMMATIC MONITORING AND DISCOVERY PLAN

Within one hundred twenty (120) calendar days of execution of this PA, pursuant to 36 C.F.R. § 800.13(a)(1), the SSMP State Team and the Corps, in consultation with the Signatories and Consulting Parties, will develop a draft and final Monitoring and Discovery Plan (MDP) for the Undertaking. The MDP shall conform to the principles of *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* and be consistent with this PA. The Corps shall provide the draft MDP for circulation among the Signatories and Consulting Parties for review and comment for thirty (30) days. Once the Corps receives, considers, and addresses all comments on the MDP from the Signatories and Consulting Parties, the Corps will provide the final MDP to the Signatories and Consulting Parties. If any disagreement is not resolved, the parties shall follow the dispute resolution process in Stipulation XIII. The final will include a summary matrix of the comments received and the Corps' responses.

Prior to finalization of the MDP, any post review discoveries during implementation of Planned Projects shall be governed by the procedures in 36 C.F.R. § 800.13(b). When the consultation described in Stipulation V results in a requirement for monitoring, the Planned Project will carry out that monitoring as determined in that consultation.

The monitoring and discovery plan for the Undertaking shall include the following:

1. A description of the Undertaking and a map of the APE.
2. Protocols tailored to the environmental conditions within the APE and to the specific historic property or types of historic properties which are likely to be present and could be inadvertently discovered in the APE.
3. A summary of the previous historic property identification efforts and provide information on the probability for encountering buried cultural deposits.
4. A description of the roles and responsibility of an Archaeological Monitor (e.g., authority to halt construction for an inadvertent discovery, daily monitoring, daily reporting, etc.) and Project Archaeologist (e.g., oversee monitors, response to inadvertent discovery, final reporting, etc.).
5. A statement that archaeological monitoring shall be conducted by personnel that meet the PQS standard or under the direct supervision of a person meeting the PQS standard.
6. Provisions for tribal monitors, should tribal consultation indicate the need for tribal monitoring, including description of the roles and responsibilities of the tribal monitor.
7. A post-review discovery section that details the protocols to be followed in the event of an unanticipated discovery of cultural resources or human remains.
8. Notification procedures and a list of key contacts for the Undertaking.
9. Description of final monitoring report and submittal to the Corps and appropriate Consulting Parties, and, once complete, inclusion in the Annual Report.
10. Because previously unidentified archaeological resources may be discovered during implementation of a Planned Project, the Corps shall ensure the requirements outlined below are included in the post-review discoveries section of the Undertaking's MDP.

11. All ground-disturbing activities within hundred (100) feet of the discovery are immediately halted and any exposed archaeological resources will be protected from further harm and protected. A PQS archaeologist will conduct a field inspection of the find to determine the extent of the discovery and provide NRHP eligibility recommendations to the Corps.
12. The Corps will determine if the discovery is eligible for listing in the NRHP. The Corps may assume a property to be eligible pursuant to 36 C.F.R. § 800.13(c).
13. In accordance with 36 C.F.R. § 800.13(b)(3), the Corps shall notify the SHPO, and Planned Project Consulting Parties within forty-eight (48) hours of the discovery. The Corps will provide its assessment of the NRHP eligibility, and the measures proposed to resolve adverse effects, if applicable.
14. The SHPO and Planned Project Consulting Parties shall respond within forty-eight (48) hours of the notification. The Corps shall take into account their recommendations regarding NRHP eligibility and the proposed actions, and then carry out the appropriate actions. The Corps shall provide the Planned Project Consulting Parties a report of the actions when they are completed.
15. Should the discovered cultural resource be identified by the Federally and non-Federally recognized Tribe(s) as a property of traditional cultural or religious significance, the Corps will consult with the appropriate Federally and non-Federally recognized Tribe regarding eligibility and treatment.
16. Post-review discoveries which are not being adversely affected by the activity and which can be avoided will be protected, monitored, and to the extent possible, avoided by future Planned Project ground disturbing activities.

## **XI. TREATMENT OF HUMAN REMAINS AND CULTURAL ITEMS**

- A. The Corps shall ensure that the DA permit conditions include Treatment requirements outlined in the post-review discoveries section of the MDP, per Stipulations VII and X. These DA permit conditions would apply to the entirety of a Planned Project. The Corps shall ensure the following is included in the DA permit for all discoveries of human remains:
  1. If any burials, human remains, or associated cultural items, as defined by NAGPRA, are found on Tribal lands or Federal Lands, all activities (e.g., Planned Project ground disturbance, archaeological fieldwork, or other action) shall immediately cease within a hundred (100) foot radius of the discovery, the discovery will be protected, and the SSMP State Team shall notify the Corps within two (2) hours of the discovery. The

Corps shall notify applicable Cooperating Agency within forty-eight (48) hours of the discovery. The applicable Cooperating Agency(ies) shall be responsible for following the appropriate NAGPRA regulations. The Corps shall concurrently follow the post-review discovery procedures discussed in Stipulations VII or X. The Corps shall ensure that construction will not proceed in the location of the discovery until the Cooperating Agency(ies) has fulfilled its responsibilities in accordance with these provisions and a notice to proceed has been issued.

2. If any burials, human remains, or associated cultural items are discovered on non-Federal lands, all activities (e.g., Planned Project ground disturbance, archaeological fieldwork, or other action) shall immediately cease within a hundred (100) foot radius of the discovery, the discovery will be protected, and the SSMP State Team will notify the appropriate County Coroner. The SSMP State Team will also notify the Corps within two (2) hours of the discovery. The Corps shall concurrently follow the post-review discovery procedures as discussed in Stipulation VII or X. The SSMP State Team shall treat the discovery under the provisions of the California Health and Safety Code Section 7050.5 and the California Public Resources Code Sections 5097.94 and 5097.98. If the Coroner determines that the remains are of Native American origin, then the discovery shall be treated in accordance with the provisions of Section 5097.98 of the California Public Resources Code and the provisions in the California Native American Graves Protection and Repatriation Act (California Health and Safety Code 8010-8030). The Corps shall ensure that construction will not proceed in the location of the discovery until the SSMP State Team has fulfilled its responsibilities in accordance with these provisions and a notice to proceed has been issued.

## **XII. AMENDMENTS**

- A. This PA may be amended only upon written agreement of the Signatories. The amendment process shall comply with 36 C.F.R. § 800.6(c)(7).
  1. Upon receipt of a written request to amend this PA, including its appendices, or upon a determination by the Corps to propose such an amendment, the Corps will immediately notify the other Consulting Parties and initiate a thirty (30)-day period from the date of receipt to consult on the proposed amendment, or as extended by the Signatories, whereupon all Consulting Parties shall consult to consider such amendments.
  2. This PA will be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

### **XIII. DISPUTE RESOLUTION**

- A. Should any Signatory or Concurring Party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Corps shall consult with such party to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:
1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP will provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and Consulting Parties and provide them with a copy of this written response. The Corps will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from Consulting Parties to the PA and provide them and the ACHP with a copy of such written response.
  3. The Corps' responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

### **XIV. CONFIDENTIALITY**

- A. The Signatories of this PA acknowledge that information about historic properties, including prospective or considered historic properties for the purposes of this PA, and archaeological site information shall be considered sensitive and protected under the provisions of the NHPA Section 304, 54 U.S.C. § 307103 and 36 C.F.R. § 800.11(c), and Section 9 of the Archaeological Resources Protection Act (ARPA), 16 U.S.C. § 470hh, and the implementing regulations at 32 C.F.R. § 229.18, relating to the disclosure of sensitive information. The Corps will ensure that all actions and documentation prescribed by this PA are, where necessary, consistent with the requirements of NHPA Section 304 and 36 C.F.R. § 800.11(c) and ARPA Section 9 and 32 C.F.R. § 229.18. The Signatories shall ensure that all sensitive information is protected to the fullest extent available under law.
- B. The Signatories will respect any sites of traditional religious and cultural importance [NHPA Section 101(d)(6)(A)] and confidentiality concerns expressed by Federally recognized Tribes to the extent allowed by law.

## **XV. PUBLIC PARTICIPATION AND OBJECTION**

- A. The views of the public are essential to informed decision-making. The Corps has provided information about the Undertaking and its effects on historic properties to the public and has provided them an opportunity to comment. In accordance with 36 C.F.R. § 800.2(d)(3), the Corps has coordinated its responsibilities for public involvement under Section 106 with its responsibilities under NEPA.
- B. The Corps shall continue to involve the public in the Section 106 process as provided at 36 C.F.R. § 800.2(d) and 36 C.F.R. § 800.3(e) throughout the implementation of this PA. The Corps shall ensure that the public is informed through press releases, posting of appropriate, non-confidential documents on the internet, or other mechanisms, about the manner in which the Corps is meeting its Section 106 responsibilities, and how the Corps is coordinating Section 106 with other public involvement processes including NEPA. The PA will be made available on the Corps' public website.
- C. Documentation of the Corps' efforts to ensure the public is informed shall be included in the PA annual report.
- D. At any time during implementation of the terms of this PA should any Interested Member of the Public raise an objection in writing pertaining to such implementation or the effect of the Undertaking on historic properties to any Signatory to this PA, that party shall immediately notify the Corps. The Corps shall immediately notify the Consulting Parties in writing of the objection. Any Signatory may choose to comment on the objection to the Corps. The Corps shall establish a reasonable time frame for this comment period. The Corps shall consider the objection, and in reaching its decision, the Corps will take all comments from the other Consulting Parties into account. 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 Consulting Parties of its decision in writing, including a copy of the response to the objecting party. The Corps will determine the final resolution of the objection. Following issuance of its final decision, Corps may authorize the action or decision.

## **XVI. EMERGENCY ACTIONS**

- A. Emergency response includes those actions deemed necessary by the Corps as an immediate and direct reaction to a disaster or emergency declared by the President of the United States, Governor of California, or tribal government, or other immediate threat to life or property. Emergency actions under this PA are only those implemented within thirty (30) days from the initiation of the emergency situation. The Corps may request an extension of the period of applicability from the ACHP and SHPO prior to the expiration of the thirty (30) days.

- B. If the emergency action has the potential to affect historic properties, the Corps shall notify the SHPO, interested Indian tribes, and other Consulting Parties as appropriate prior to undertaking the action, when feasible. As part of the notification, the Corps shall provide a plan to address the emergency. The SHPO and other Consulting Parties shall have seven (7) calendar days to review and comment on the plan to address the emergency. If the SHPO and other Consulting Parties do not comment or object to the plan within the review period, the Corps shall implement the proposed plan.
- C. If the Corps is unable to consult with the SHPO and other Consulting Parties prior to carrying out emergency actions, the Corps shall notify the SHPO and other Consulting Parties as appropriate within forty-eight (48) hours after the initiation of the emergency action. This notification shall include a description of the emergency action taken, the effects of the action(s) to historic properties, and, where appropriate, any further proposed measures to avoid, minimize, or mitigate potential adverse effects to historic properties. The SHPO and other Consulting Parties shall have seven (7) calendar days to review and comment on the proposal where further action is required to address the emergency. If the SHPO and other Consulting Parties do not object to the plan within the review period, the Corps shall implement the proposed plan.
- D. Where possible, the Corps shall ensure that such emergency actions shall be undertaken in a manner that does not foreclose future preservation or restoration of historic properties. Where such emergency actions may affect historic buildings, they shall be undertaken in a manner that is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. (<http://www.nps.gov/tps/standards.htm> ). In addition, where possible, the Corps shall ensure that such actions shall be done with on-site monitoring by the appropriate preservation professional who meets, at a minimum, the PQS in his or her field of expertise.
- E. Where the SHPO and/or any Consulting Party has reason to believe that a historic property may be adversely affected by an emergency action, the party shall submit a request to the Corps to review and comment on that action.
- F. Immediate rescue and salvage operations conducted to preserve life or property are exempt from these and all other provisions of this PA.

## **XVII. ANNUAL REPORTING AND ANNUAL MEETING**

- A. The Corps shall prepare an annual report documenting actions carried out pursuant to this PA by September thirtieth (30<sup>th</sup>) of each fiscal year (October 1 to September 30) for the duration of this PA. This reporting period shall commence in the year following the Effective Date of this PA. The Corps shall distribute the annual report to all Consulting

Parties to this PA. The annual report shall address issues and describe actions and accomplishments over the past year, including, as applicable:

1. Planned Project HPIN checklists (Stipulation V.B.5).
  2. HPTPs (Stipulation VII).
  3. Discussion of cumulative impacts (Stipulation VIII).
  4. Applied Planned Project exemptions.
  5. Findings of No Adverse Effects.
  6. Historic property surveys and results.
  7. Status of treatment and mitigation activities.
  8. Status and results of monitoring efforts and unanticipated effects to historic properties/previously undiscovered historic properties, if any.
  9. Ongoing and completed public education activities.
  10. Routine activities for which no consultation occurred, pursuant to Appendix C of this PA.
  11. Any issues that are affecting or may affect the implementation of the terms of this PA and any recommended amendments.
  12. Any disputes and objections received, and how they were resolved.
  13. Any additional parties who have become a Signatory or Concurring Party to this PA in the past year.
- B. The Corps shall coordinate a meeting of the Consulting Parties to be scheduled within ninety (90) days of distribution of the annual report, or another mutually agreed upon date, to discuss activities carried out pursuant to this PA during the preceding year and activities scheduled for the upcoming year. This meeting, should it be deemed unnecessary, may be cancelled by mutual consent of the Signatories.

## **XVIII. TERMINATION**

- A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an

amendment per Stipulation XII, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

- B. Once the PA is terminated, and prior to work continuing on the Undertaking, the Corps must either (a) execute a new PA pursuant to 36 C.F.R. § 800.14(b), or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Corps shall notify the Signatories as to the course of action it will pursue.

## **XIX. COOPERATING AGENCY WITHDRAWAL FROM THIS PA**

If at any time a Cooperating Agency disagrees with the manner in which the terms of this PA are carried out, the Cooperating Agency may object in writing to the Corps. The Corps shall follow Stipulation XIII in resolving the objection. If the Corps and Cooperating Agency are unable to come to agreement, the Cooperating Agency may withdraw from this PA within thirty (30) days written notification to all Signatories; however, withdrawal by a Cooperating Agency shall not terminate this PA. Upon withdrawal from the PA, the Cooperating Agency would be individually responsible for Section 106 compliance for its action(s).

## **XX. DURATION**

Unless amended or modified pursuant to Stipulation XII, this PA shall remain in force for ten (10) years after the effective date. If the terms of this PA are not carried out prior to expiration, the Corps will consult with the other parties to this PA to consider amendment of the PA at least sixty (60) calendar days prior to its expiration.

## **XXI. EFFECTIVE DATE**

This PA and any amendments shall take effect on the date that it has been fully executed by the Corps, SHPO, and ACHP.

## **XXII. COUNTERPART SIGNATURES**

This PA and any amendments may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

## **XXIII. ANTI-DEFICIENCY ACT**

The Corps' obligations under this PA are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provision of the Anti-Deficiency Act (ADA), 31 U.S.C. § 1341. The Corps shall make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the ADA alters or impairs the



**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
THE TORRES MARTINEZ DESERT CAHUILLA INDIANS  
REGARDING  
COMPLIANCE WITH  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE SALTON SEA MANAGEMENT PROGRAM, 10-YEAR PLAN PROJECTS  
IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**SIGNATORY**

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Andrew J. Baker  
Colonel, U.S. Army  
Commanding

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
THE TORRES MARTINEZ DESERT CAHUILLA INDIANS  
REGARDING  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**SIGNATORY**

CALIFORNIA OFFICE OF HISTORIC PRESERVATION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Julianne Polanco  
State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
AND  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**SIGNATORY**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Reid Nelson  
Executive Director

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**SIGNATORY**

TORRES MARTINEZ DESERT CAHUILLA INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Thomas Tortez  
Tribal Council Chairman

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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**INVITED SIGNATORY**

BUREAU OF INDIAN AFFAIRS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Amy Dutschke  
Pacific Regional Director

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**INVITED SIGNATORY**

BUREAU OF LAND MANAGEMENT

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Michelle Lynch  
District Manager, California Desert District

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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**INVITED SIGNATORY**

BUREAU OF RECLAMATION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Shonna Dooman

Chief, Resource Management Office, Lower Colorado Region

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**INVITED SIGNATORY**

U.S. FISH AND WILDLIFE SERVICE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Victoria Touchstone

Conservation Planner, Department of Interior Unified Regions 8 & 10

San Diego National Wildlife Refuge Complex

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**INVITED SIGNATORY**

NATURAL RESOURCES CONSERVATION SERVICE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Carlos Suarez Oliva  
State Conservationist, California Natural Resources Conservation Service

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**INVITED SIGNATORY**

CALIFORNIA DEPARTMENT OF WATER RESOURCES

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Kristopher Tjernell  
Deputy Director Integrated Watershed Management

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**INVITED SIGNATORY**

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Heidi Calvert  
Regional Manager, Inland Deserts Region, R6

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**INVITED SIGNATORY**

CALIFORNIA NATURAL RESOURCES AGENCY

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Samantha Arthur  
Assistant Secretary for Salton Sea Policy

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**CONCURRING PARTY**

AGUA CALIENTE BAND OF CAHUILLA INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Patricia Garcia-Plotkin  
Tribal Historic Preservation Officer

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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**CONCURRING PARTY**

CAMPO BAND OF KUMEYAAY INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Marcus Cuero  
Tribal Chairman

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**CONCURRING PARTY**

FORT YUMA QUECHAN INDIAN TRIBE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Jill McCormick  
Tribal Historic Preservation Officer

**PROGRAMMATIC AGREEMENT  
AMONG  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**CONCURRING PARTY**

MORONGO BAND OF MISSION INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Bernadette Ann Brierty  
Tribal Historic Preservation Officer

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS  
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IMPERIAL AND RIVERSIDE COUNTIES, CALIFORNIA**

**CONCURRING PARTY**

VIEJAS BAND OF KUMEYAAY INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Ernest Pingleton  
Tribal Historic Preservation Officer

## **APPENDICES**

Appendix A Area of Potential Effects (APE) and List of Activities in the Undertaking

Appendix B Acronyms for this Programmatic Agreement

Appendix C Exempted Planned Projects

Appendix D Cultural Resource Types Exempt from Evaluation