

Appendix H

**Draft National Historic Preservation Act  
Section 106 Programmatic Agreement**

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**PROGRAMMATIC AGREEMENT  
AMONG THE  
U.S. ARMY CORPS OF ENGINEERS, CENTRAL VALLEY FLOOD PROTECTION BOARD,  
WEST SACRAMENTO AREA FLOOD CONTROL AGENCY, AND  
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
REGARDING THE  
SOUTHPORT SACRAMENTO RIVER EARLY IMPLEMENTATION PROJECT,  
YOLO COUNTY, CALIFORNIA**

**WHEREAS**, the West Sacramento Area Flood Control Agency (WSAFCA) proposes to implement the Southport Sacramento River Early Implementation Project to construct flood risk-reduction measures along the Sacramento River South Levee in the city of West Sacramento, Yolo County, California. The primary purpose of the Southport project is to provide flood risk management for the entire city of West Sacramento. Secondary purposes of the Southport project are to provide ecosystem restoration and public recreation opportunities that are compatible with flood risk-reduction measures. (For more details on the project, as described in Attachment A: *Description of the Project and Undertakings*); and

**WHEREAS**, this project requires authorization from the U.S. Army Corps of Engineers (Corps) to modify federal levees under Section 14 of the River and Harbors Act (33 U.S.C. § 408) and a permit to discharge fill to waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. § 1344), and these actions constitute undertakings requiring compliance with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f); and

**WHEREAS**, the Corps has decided to defer final identification and evaluation of historic properties as permitted by 36 C.F.R. § 800.4[b] [2] because the project is being constructed in phases and the Corps does not know the final design for the proposed work; and

**WHEREAS**, the Corps has chosen to prepare this programmatic agreement (Agreement) to ensure that cultural resources that may be affected by the undertakings are identified, such resources are evaluated for eligibility to the National Register of Historic Places (NRHP), and any adverse effects caused by these undertakings are resolved prior to construction of project features; 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 the Buena Vista Rancheria of the Me-Wuk Indians of California, the Ione Band of Miwok Indians of California, the United Auburn Indian Community of the Auburn Rancheria, the Wilton Rancheria, the Yocha Dehe Wintun Nation, and interested Native American Tribal governments and individuals to consult on the undertaking and the preparation of this Agreement; and

**WHEREAS**, the Buena Vista Rancheria of the Me-Wuk Indians of California, the Ione Band of Miwok Indians of California, the United Auburn Indian Community of the Auburn Rancheria, the Wilton

Rancheria, have communicated with the Corps either verbally, or via correspondence that they defer to the Yocha Dehe to consult on this project; and

**WHEREAS**, the Corps has consulted with individuals, historical societies, and organizations; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6, the Advisory Council on Historic Preservation (ACHP) has been invited to participate in consultation, and the ACHP declined in a letter dated May 9, 2013; and

**WHEREAS**, the Corps has consulted with the State Historic Preservation Officer (SHPO) in accordance with 36 C.F.R. Part 800, the regulations implementing Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470f); and

**WHEREAS**, the Corps has invited WSAFCA to participate in this agreement as a signatory party because the WSAFCA is the project proponent who is constructing the project;

**WHEREAS**, the Corps has invited the Central Valley Flood Protection Board (CVFPB) to participate in this agreement as a concurring party because the CVFPB authorizes modifications to affected levees (California Water Code Section 8710); and

**WHEREAS**, the Corps has consulted with the Yocha Dehe Wintun Nation and invited them to be a concurring party to this Agreement; and

**WHEREAS**, the Corps in consultation with signatories and concurring parties, has prepared, and will amend/append the HPMP, if necessary, a research design and historic property management HPMP (Attachment B, *Southport Sacramento River Early Implementation Project Historic Properties Management Plan*) that will be used to guide inventory, evaluation, and management of historic properties;

**NOW THEREFORE**, the Corps, the SHPO, and WSAFCA agree that, the following stipulations will be implemented in accordance with this Agreement and the attached HPMP, in order to take into account the effects of the undertaking on historic properties; and further agree that these stipulations shall govern the undertaking and all activities occurring under the undertaking that may affect historic properties, until this Agreement expires or is terminated.

## **STIPULATIONS**

**The Corps shall ensure that the following measures are carried out.**

### **Stipulation I. Applicability and Scope, Relationship to Other Agreements**

#### **(A) Applicability and Scope**

1. This Agreement applies to all portions of the undertaking within the Area of Potential Effect (APE) developed for each phase of the Project where the undertaking could adversely affect historic properties.
2. An HPMP has been prepared by WSAFCA in consultation with signatories and concurring parties and enclosed as Attachment B submitted as a supporting document to the Agreement. Within 60 days after the annual anniversary of the execution of the Agreement, it will be reviewed by the Corps in consultation with the signatories, and concurring parties to determine if any additions or revisions are required. If the Corps determines, in consultation with the signatories and concurring parties, that revisions are needed, the Corps will submit the Draft Amended HPMP to the signatories and concurring parties for a 15-day review and comment period. The Corps, in consultation with the signatories and concurring parties, will consider any comments received during the 15-day review and comment period when preparing the Amended HPMP. The Corps will provide all signatories and concurring parties with the proposed revised HPMP within 10 working days of the close of the 15 day review period. The signatories and concurring parties will have 10 working days to review and the proposed revised HPMP and either agree to the revisions or propose alternative revisions to the Corps via e-mail, telephone, or United States Postal Service.

#### **(B) Conflicts with Other Agreement Documents**

This Agreement does not negate or supersede any agreements governing the project area or vicinity, between Corps and Indian tribes in effect at the time the Agreement is executed, nor does it negate or supersede any agreement documents executed within the project area or vicinity between the Corps and the SHPO pursuant to 36 C.F.R. Part 800. If any agreement between the Corps and Indian Tribes or between the Corps and the SHPO in effect at the time the agreement is executed is found to be in conflict with this Agreement, the respective signatories will confer to resolve the conflict per Stipulation VII(A): Methods for Resolving Objections. If the resolution results in a proposed amendment to this Agreement, the provisions under Stipulation VIII. Amendments will be followed. Resource specific treatment plans will supersede the HPMP in cases where there may be conflict between the two documents.

#### **(C) Responsibilities**

1. WSAFCA assumes responsibility for performing cultural resources investigations and any work necessary to resolve adverse effects that are subsequently identified as necessary to satisfy Section

106 of the National Historic Preservation Act, subject to the review and approval of the Corps. While carrying out this responsibility, WSAFCA agrees to seek the Corps' review and approval of all plans for cultural resources investigations, specific scopes and methodologies of those plans, and results of the subsequent investigations to ensure that the work satisfies the requirements of Section 106 of the National Historic Preservation Act and Stipulation I of this Agreement.

2. If any project activities take place on privately owned property, WSAFCA will reach agreement with any affected private landowners that the procedures outlined in the following Stipulations will be followed in the event of discovery of archaeological resources on private lands within the project area.

## **Stipulation II. Definitions**

1. The definitions set forth at 36 C.F.R. § 800.16 are applicable throughout this Agreement.
2. "HPMP" as used in this document, refers to the attached *Historic Properties Management Plan*. This document provides methodology covering inventory methods, recording of resources, evaluation and treatment of identified resources, curation of recovered materials, and other technical specifications necessary to implement this Agreement. The research design provided as part of the HPMP is designed to provide significance themes for historic-era and prehistoric resources that may be identified, and to consider these resources in relation to regional research domains as well as specific research questions. This HPMP may be amended separately from the Agreement but cannot revise the substantive requirements of this Agreement.
3. "HPTP" as used in this document, refers to a *Historic Properties Treatment Plan* which will be resource specific subsequent documentation that tiers off of the HPMP and details mitigation for impacts to historic properties.

## **Stipulation III. Notices and Communications**

### **(A) Methods of Transmittal**

The signatory parties agree that reports and deliverables, such as inventory reports, findings of effect, and treatment plans prepared by WSAFCA and the Corps, will be submitted in hard copy to other signatories and concurring parties for review. There is 30 day review period for SHPO and Indian groups. WSAFCA will have 15 days to make any necessary changes as directed by the Corps followed by a 15 day period for the Corps to back check review, as needed. All decisions from the SHPO, such as concurrence regarding evaluations, findings of effect, and adequacy of treatment, will be delivered in hard copy and retained by WSAFCA and the Corps.

### **(B) Communication Protocol**

The signatory parties agree that the following communication protocols will be followed during each project phase:

1. WSAFCA may assign a third party (“contractor”) to act on their behalf in executing the terms of this Agreement.
2. Should issues arise during field survey, WSAFCA or its contractor may communicate with the USACE as appropriate during field survey.
3. WSAFCA or its contractor will transmit any necessary reports electronically unless hardcopies are requested by the Corps.
4. In cases of inadvertent archaeological discovery during construction, WSAFCA or its contractor will have the authority to immediately stop construction work in the vicinity of an inadvertent archaeological discovery in accordance with Stipulation V(B). Work may proceed only after the provisions of Stipulation V(B) and applicable components of the HPMP have been satisfied. WSAFCA and its contractor will communicate directly with the Corps during all phases of the project.

#### **Stipulation IV. Inventory and Evaluation of Historic Properties**

##### **(A) Phasing of Management Steps**

1. WSAFCA has completed preliminary cultural resource inventories of a portion of the overall project area depicted in Figure 1 and included in Attachment A, in order to identify the likely presence of historic properties in the project area, as required under 36 C.F.R. § 800.4(b)(2). The project area depicted in this attachment represents the maximum extent of the geographic area in which construction may affect historic properties for the project as currently understood. As noted below in Stipulation IV(B), separate APE maps will be developed for the various phases of the project.
2. Because the project will be constructed in at least two (2) calendar years, with development of the proposed design and project area for the first year’s work preceding the second year, it is not feasible to complete all identification and evaluation of historic properties in advance of federal permits and authorizations. The Corps will therefore direct WSAFCA to develop a HPTP for the treatment of specific types of archaeological sites during discrete phases or activities identified by WSAFCA and the Corps, according to the construction schedule or timeline of the larger project, as permitted in 36 C.F.R. § 800.4(b)(2). Reviews will be conducted in accordance with Stipulation IV(F). No construction will occur prior to completion of these HPTPs.
3. For each project phase or activity, the Corps will consult with WSAFCA and other signatories and concurring parties to define an APE for the relevant project phase or activity, complete an inventory of the APE, evaluate identified resources for the NRHP, make a finding of effect, and develop treatment methods to avoid, reduce, or minimize adverse effects. Reviews of each of these steps shall be conducted in accordance with Stipulation IV(F).

## **(B) Definition of the Area of Potential Effects for Each Phase or Activity**

WSAFCA or its contractor will prepare draft APEs for review and approval by the Corps. The Corps will define the APE for each phase or discrete activity of the project. Draft phase- or activity-specific APEs will be submitted to the SHPO for review prior to completing phased inventories. The signatories and concurring parties will have thirty (30) calendar days to review and provide comments on the proposed APEs. WSAFCA will have 15 days to make any necessary changes as directed by the Corps followed by a 15 day period for the Corps to back check review, as needed.

## **(C) Inventory of the Area of Potential Effects**

1. The Corps will ensure that WSAFCA, in consultation with signatories and concurring parties will complete an inventory of cultural resources within each phase- or activity-specific APE, using methods identified in the attached HPMP. The inventory will cover the entire APE for each phase or activity. An inventory report will be prepared in accordance with the attached HPMP, and will be reviewed in accordance with Stipulation IV(F).

2. The Corps will ensure that all identification activities conform to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, Standards for Identification (Federal Register 48 FR 44720-44723).

## **(D) Evaluation and Finding of Effect**

1. For all identified cultural resources, the Corps will, in consultation with signatories and concurring parties, prepare an evaluation for eligibility to the NRHP, consistent with the methods and standards in the attached HPMP and submit the evaluation to the SHPO. If there are adverse effects to historic properties, the inventory report will include recommendations for protecting historic properties by avoiding, minimizing, or mitigating using methods appropriate to the nature of resources identified. The Corps will ensure that WSAFCA will apply the criteria for evaluation for the NRHP provided in 36 C.F.R. § 60.4 and make an explicit finding of effect in the inventory report, describing the anticipated effect of the project phase on resources eligible or recommended as eligible for the NRHP, by applying the criteria of adverse effect consistent with 36 C.F.R. § 800.5(a)(1). Because it is the Corps responsibility to determine eligibility, the Corps will review the finding of effect and eligibility determinations prior to SHPO review. All reviews will be conducted in accordance with Stipulation IV(F).

2. Based upon the finding of effect of each phase or activity-specific APE, if adverse effects are anticipated WSAFCA will also provide recommendations to the Corps via e-mail or United States Postal Service for construction monitoring. These recommendations will be based upon relevant factors such as the density and distribution of identified resources, geomorphology, recommendations from Native Americans, historic maps, and other relevant information. The Corps will have 30 days to review the proposed recommendations and provide acceptance of the recommendations or comments for modification via e-mail or the United States Postal Service.

3. When previously evaluated historic properties are identified within the APE for a specific project phase or activity, the Corps will review those previous evaluations. The passage of time, changing perceptions of significance, new information, incomplete or flawed previous evaluations, and factual errors warrant such reviews and may prompt the Corps to reevaluate the properties and provide updated recordation. The Corps will consult with signatories and concurring parties during the review and reevaluation process to determine which historic properties have cultural and spiritual significance.

#### **(E) Resolution of Adverse Effects**

For all identified historic properties found to be adversely affected by the Undertaking, WSAFCA and the Corps, in consultation with other signatories and concurring parties, will develop and implement treatment to resolve adverse effects. Treatment may consist of avoidance measures that entirely avoid adverse effects, documentation, public interpretation, data recovery excavations, preservation in place, or other methods identified by the Corps in consultation with the SHPO, WSAFCA and Indian tribal governments. WSAFCA may use treatment methods provided in the attached HPMP or may develop property-specific HPTPs, as necessary. If treatment methods described in the HPMP are appropriate for necessary treatment, WSAFCA and the Corps may refer to those methods in the inventory report, finding of effect document, or stand-alone treatment plan, and incorporate them by reference without repeating the full text of the relevant treatment methods. The Corps will have a review period of 30 days followed by a 30 day review period for SHPO and Indian groups. WSAFCA will have 15 days to make any necessary changes as directed by the Corps followed by a 15 day period for the Corps to back check review, as needed.

#### **(F) Review of Reports**

1. Reports describing the results of inventory, evaluation, Findings of Effect, and proposed treatment will be submitted to the signatories and concurring parties for review after review and approval by the Corps. Once submitted by WSAFCA, the Corps will have a review period of 90 days. WSAFCA may provide concurring parties the opportunity to review administrative drafts of these documents. WSAFCA and the Corps may combine inventory, evaluation, and findings of effect management steps in one document.

2. The signatories and concurring parties will have thirty (30) calendar days to review reports prepared under this stipulation, commencing upon receipt of the relevant report. For revised reports requiring additional SHPO review the SHPO will also shall have thirty (30) calendar days from the date of receipt of the revised report to review and to provide comments in writing. All comments will be considered for the final report. If the Corps does not receive comments within thirty (30) days of submittal, then the Corps may proceed.

3. Proposed HPTPs addressing mitigation for adverse effects, which have been developed in consultation with signatories and concurring parties will be submitted in a separate report. Review periods will adhere to those outlined elsewhere in this Stipulation. If the Corps does not receive



comments within 30 days of submittal of proposed treatment HPMPs to the SHPO, the Corps may proceed with the treatment HPMPs.

## **Stipulation V. Monitoring and Inadvertent Discoveries and Unanticipated Effects**

### **(A) Workforce Training and Construction Monitoring for Archaeology**

1. Qualified archaeologists, meeting the Secretary of Interior Standards for Professional Qualifications (Stipulation I) retained by WSAFCA will provide training to construction personnel so that construction personnel may take necessary actions to protect inadvertent archaeological discoveries. "Qualified" as used in this stipulation means archaeologists that meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716). This training will cover both the identification of resources that may be encountered during construction and procedures to be followed in the event of a discovery.

2. Qualified archaeologists retained by WSAFCA will conduct monitoring of construction where the Corps determines necessary to ensure that identified resources are protected or where there is a high sensitivity for previously unidentified resources, as prescribed in each phase- or activity-specific inventory report and the attached HPMP. The location, frequency, and staffing levels for monitoring activities will be determined by the Corps based on recommendations prepared by WSAFCA. This determinate will be made following the review process described above in Stipulation IV(F).

### **(B) Discovery Procedures for Resources Encountered During Construction**

1. If a qualified archaeological monitor determines that potentially NRHP eligible resources are discovered or inadvertently affected during construction, the archaeological monitor will ensure all ground disturbing activities will immediately stop within 300 ft. (100 m) of the discovery and the location of the discovery will be marked for avoidance. The contractor must notify the Corps and WSAFCA within an hour of the discovery, or by the start of the following business day if the discovery occurs outside of the Corps office hours.

Once adequate information about the discovery has been communicated to the Corps, the Corps will determine whether the discovery will be treated as an NRHP-eligible resource by evaluating the resource per the criteria in 36 C.F.R. § 60.4, and consulting on that determination with the SHPO and the Tribes. Limited subsurface testing (i.e. backhoe trenching, test pits, etc.), if necessary, may be conducted at the direction of the Corps, to aid in this determination.

The Corps will notify the SHPO and interested Indian tribes to initiate consultation within 48 hours of the discovery via telephone or e-mail. Notification should include a description of the discovery, the circumstances leading to its identification, and recommendations for further action. Where feasible, the notification will also include NRHP-eligibility recommendation per 36 C.F.R. § 60.4 and a finding of effect per 36 C.F.R. § 800.5(a)(1). Until the Corps, in consultation with the signatories and concurring parties has gathered enough information to determine that a discovery is or is not

NRHP-eligible, the discovery shall be treated as NRHP-eligible. Continuation of construction activities may occur after the Corps has determined that the appropriate steps outlined under the heading of "Procedures for Inadvertent Discoveries" have been followed as outlined in the HPMP are followed. If the Corps, in consultation with signatories and concurring parties, determines that the discovery is not an NRHP-eligible resource, the discovery will be documented and construction may proceed at the direction of the Corps and WSAFCA.

2. If the Corps, in consultation with the signatories and concurring parties, determines that the resource is eligible for the NRHP, the Corps will notify the signatory and concurring parties as well as the ACHP of this determination within 48 hours of the determination via telephone or e-mail. If the resource cannot be evaluated based upon available evidence (for example, where more expansive test excavation or archival research is required), WSAFCA and the Corps in consultation with signatories and concurring parties will use testing and evaluation methods provided in the attached HPMP (Attachment B) for further technical work necessary to determine the eligibility of the resource and make a finding of effect per 36 C.F.R. § 800.5(a)(1). For NRHP-eligible resources subject to adverse effects, treatment will be implemented to resolve adverse effects on inadvertently discovered historic properties. The SHPO and the Tribes shall have forty-eight (48) hours to respond after notification of post-review discovery. 36 C.F.R. 800.13(b)(3).

3. In the event that human remains are discovered the Yolo County's Coroner's Office will be immediately contacted by the project archaeologist pursuant to the procedures in Section 7050.5 of the State of California Health and Safety Code and Section 5097.98 of the Public Resources Code. WSAFCA shall immediately notify the Corps of the discovery, in addition to the procedures described elsewhere in this Stipulation. If the remains are determined to be of Native American origin, the Yolo County Coroner's Office will notify the Native American Heritage Commission (NAHC) within twenty-four (24) hours of the determination. The NAHC will notify the designated Most Likely Descendent (MLD) who will provide recommendations for the treatment of remains within twenty-four (24) hours. Artifacts associated with burials are to be treated in the same manner as the human remains in accordance with the recommendations of the MLD and in consideration of the provisions in the HPMP for burials and human remains. Burial associated artifacts are defined as objects reasonably believed to have been placed with human remains as part of a death rite or ceremony. The use of the adjective "associated" refers to the fact that these items retain their association with the human remains with which they were found and that these human remains can be located. It applies to all objects that are found together as well as objects for which adequate records exist permitting a reasonable reassociation between the funerary objects and the human remains that they were buried with. It frequently occurs in archeological sites that artifacts seemingly from burials were not placed with the human remains as part of a death rite, rather they have been introduced into the burial later by natural processes or cultural activities unrelated to death rites or ceremonies. These latter objects would not be considered funerary objects.

## **Stipulation VI. Administrative Provisions for Implementation of this Agreement**

### **(A) Professional Qualifications**

1. All inventory and evaluation activities prescribed by this Agreement shall be carried out under the authority of the Corps by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) in the appropriate disciplines with regional experience and knowledge of the resources in the area.

### **(B) Documentation Standards**

Written documentation of inventory, evaluations, findings of effect, and treatment prescribed per this Agreement will conform to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740), as well as to applicable standards and guidelines established by the SHPO and the HPMP. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 C.F.R. § 800.11.

Documentation prepared by local or state agencies or their consultants in support of such findings shall be submitted to the Corps for review and approval by the Corps District Archaeologist or appropriately supervised Corps staff.

### **(C) Curation Standards**

When archaeological materials are recovered from lands owned by WSAFCA, and the Corps determines that curation is appropriate for those materials, WSAFCA agrees to preserve those materials in perpetuity in a curation facility that meets the standards described in 36 C.F.R. Part 79. Any other materials which the Corps determines are appropriate for preservation that were recovered from land not owned by WSAFCA shall be curated in a facility meeting the same qualifications, with permission of the land owner. For project components that will occur on private land, WSAFCA will incorporate provisions in the real estate agreement prior to commencement of construction activities that explicitly addresses the disposition of artifacts that may be found on the subject parcel, including whether the owner or WSAFCA will retain ownership. If the private property owner retains ownership of the artifacts, the curation standards in this Agreement may or may not apply. Certain materials may not be curated where state law and regulations, including, but not limited to California Public Resources Code Sections 5097.98 and 5097.991, for Native American human remains and associated grave goods discovered on non-federal land require different treatment. Additionally, the disposition of any abandoned shipwrecks and archaeological sites and historic resources on state lands under the jurisdiction of the California State Lands Commission (CSLC) will be determined by CSLC as provided by California Public Resources Code Section 6313, which states that title to shipwrecks and submerged cultural resources in submerged lands is vested in the state. The Corps will ensure that, to the extent permitted by applicable laws and regulations, the views of the appropriate Native American

descendant group(s) are taken into consideration when decisions are made about the disposition of Native American archaeological materials and records.

#### **(D) Reporting Requirements**

For each calendar year in which cultural resource management activities are performed under this Agreement, the Corps will submit to the SHPO a yearly summary report or memorandum documenting management milestones and reports delivered for that calendar year. This report or memorandum will be prepared and delivered to the SHPO by January 30 for the calendar year that has elapsed prior to delivery. If no cultural resource management activities are performed for any given calendar year, a letter of transmittal stating such shall be provided to the SHPO by the Corps.

#### **(E) Confidentiality**

The parties to this Agreement acknowledge that historic properties covered by this Agreement are subject to the provisions of Section 304 of the NHPA and California Government Code 6254.10 (Public Records Act) relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement maintain the confidentiality required by law.

### **Stipulation VII. Resolving Objections**

#### **(A) Methods for Resolving Objections**

Should any party to this PA object at any time in writing to the manner in which the terms of this Agreement are implemented, to any action carried out or proposed with respect to implementation of the Agreement, or to any documentation prepared in accordance with and subject to the terms of this Agreement, the Corps shall immediately notify the other PA parties of the objection, request their comments on the objection within fifteen (15) days following receipt of the Corps' notification, and proceed to consult with the objecting party for no more than thirty (30) days to resolve the objection. The Corps will honor the request of the other parties to participate in the consultation and will take any comments provided by those parties into account.

If the objection is resolved during the thirty (30) day consultation period, the Corps may proceed with the disputed action in accordance with the terms of such resolution.

#### **(B) When Objections Cannot Be Resolved**

1. If at the end of the thirty (30) day consultation period, the Corps determines that the objection cannot be resolved through consultation, the Corps will forward all documentation relevant to the objection to the ACHP, including a proposed response from the Corps, if any, to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, ACHP will exercise one of the following options:

(a) Advise the Corps that ACHP concurs within the proposed response to the objection, whereupon the Corps will respond to the objection accordingly. The objection shall thereby be resolved; or

(b) Provide the Corps with recommendations, which the Corps will take into account in reaching a final decision regarding its response to the objection. The objection shall thereby be resolved; or

(c) Where the objection relates to resolution of adverse effects, notify the Corps that the objection will be referred for comment pursuant to 36 C.F.R. § 800.7 and proceed to refer the objection for further review and comment. In this event, the Corps shall take the resulting comments into account in accordance with 36 C.F.R. § 800.7. The objection shall thereby be resolved.

2. Should the ACHP not exercise one of the options above within thirty (30) calendar days after receipt of all pertinent documentation, the Corps may assume ACHP's concurrence in its proposed response to the objection and proceed to implement their proposed response.

3. The Corps shall take into account any ACHP recommendation or comments provided in accordance with this stipulation with reference only to the subject of the objection. The responsibility of the Corps to carry out all actions under this Agreement that is not the subject of the objection will remain unchanged.

4. At any time during implementation of the measures stipulation in this Agreement, should a member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify the Corps. The Corps shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment in writing on the objection to the Corps. The Corps shall establish a reasonable time frame for this comment period of not less than fifteen (15) days following receipt of objections, unless agreed upon by signatories. The Corps shall consider the objection, and in reaching its decision, the Corps will take all comments from the other signatory parties into account. A copy of all comments will be provided to the SHPO before final decision by the Corps. Within fifteen (15) 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 signatory 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 subject to dispute hereunder to proceed in accordance with the terms of that decision.

5. The Corps will provide all other parties to this PA, and the ACHP, if the ACHP has commented, and any parties that have objected pursuant to section B.4 of this stipulation, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.

6. The Corps may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

## **Stipulation VIII. Amendments**

### **Methods for Amending This Agreement:**

Any signatory party to this Agreement may propose that this Agreement be amended, whereupon all signatory parties will consult for no more than thirty (30) calendar days to consider such amendment. The Corps may extend this consultation period by notifying the other signatories in writing, by letter or electronic means. The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the agreement in accordance with Stipulation IX. A, below.

## **Stipulation IX. Termination**

(A) If this Agreement is not amended as provided for in Stipulation VIII, or if the signatory parties propose termination of this Agreement for other reasons, the signatory party proposing termination shall, notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than thirty (30) calendar days to seek alternatives to termination. Such consultation shall not be required if the Corps proposes termination because the Undertaking no longer meets the definition set forth in 36 CFR § 800.16(y).

(B) Should such consultation result in an agreement on an alternative to termination, the signatories shall proceed in accordance with that agreement and, if necessary, shall amend the Agreement in accordance with Stipulation VIII.

(C) Should such consultation fail to result in an agreed upon resolution by the signatory parties, the signatory party proposing termination may terminate this Agreement by promptly notifying the other signatories in writing. Termination hereunder shall render this Agreement without further force or effect.

(D) If this Agreement is terminated, and if the Corps determines that the Undertaking will nonetheless proceed, then the Corps shall comply with 36 C.F.R. Part 800.3 – 800.6, or request the comments of ACHP pursuant to 36 CFR Part 800.

## **Stipulation X. Duration of the Agreement**

Unless terminated pursuant to Stipulation IX of this Agreement or unless it is superseded by another agreement executed for the covered undertaking, this Agreement will remain in effect following execution by the signatory parties until the Corps, in consultation with the other signatory parties to this Agreement, determines that all of its stipulations have been satisfactorily fulfilled. This Agreement will terminate and have no further force or effect on the day that the Corps notifies the other Agreement signatories in writing of its determination that all stipulations of this Agreement has been satisfactorily fulfilled and the signatories have concurred.

Construction, monitoring, and maintenance of all aspects of the undertaking have been completed and all terms of this Agreement have been fulfilled in a satisfactory manner; or until

The terms of this Agreement shall be satisfactorily fulfilled within ten (10) years following the date of execution by the signatory parties. If the Corps determines that this requirement cannot be met, the Agreement parties will consult to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment of the PA, or termination. In the event of termination, the Corps will comply with Stipulation IX(D) if it determines that the Undertaking will proceed notwithstanding termination of this Agreement.

If the Undertaking has not been implemented within ten (10) years following the execution of this Agreement, this Agreement shall automatically terminate and have no further force or effect. In such event, the Corps shall notify the other signatory parties in writing and, if it chooses to continue with the Undertaking, shall reinitiate review of the Undertaking in accordance with 36 CFR Part 800.

#### **Stipulation XI. Effective Date**

This Agreement will take effect on the date that it has been executed by the signatories.

**EXECUTION** and implementation of this Agreement is evidence that the Corps has afforded ACHP a reasonable opportunity to comment on this Agreement and the associated undertaking; that the Corps has taken into account the effects of the undertaking on historic properties; and that the Corps has complied with Section 106 of the NHPA and 36 C.F.R. Part 800 sufficiently to satisfy Section 106 for this undertaking.

#### **ATTACHMENTS**

A. Project Description and Project Overview Map

**SIGNATORY PARTIES:**

**U.S. Army Corps of Engineers**

By \_\_\_\_\_ Date \_\_\_\_\_

Michael J. Farrell  
Colonel, U.S. Army  
District Commander

**California State Office of Historic Preservation**

By \_\_\_\_\_ Date \_\_\_\_\_

Carol Roland-Nawi, Ph.D.  
State Historic Preservation Officer

**West Sacramento Area Flood Control Agency**

By \_\_\_\_\_ Date \_\_\_\_\_

Kenneth A. Ruzich  
WSAFCA General Manager

**CONCURRING PARTIES:**

**Central Valley Flood Protection Board**

By \_\_\_\_\_ Date \_\_\_\_\_

Jay Punia  
Executive Officer

**Yoche Dehe Wintun Nation**

By \_\_\_\_\_ Date \_\_\_\_\_

Marshall McKay  
Chairman



Attachment A  
**Description of the Project and  
U.S. Army Corps of Engineers Undertakings**

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Attachment A

# Southport Sacramento River Early Implementation Project: Description of the Project and U.S. Army Corps of Engineers Undertakings

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## A.1 Introduction

This attachment provides information to support the programmatic agreement prepared to guide management of cultural resources for the Southport Sacramento River Early Implementation Project (EIP). Relevant sections include a detailed description of the proposed project and associated actions that require compliance with Section 106 of the National Historic Preservation Act (NHPA).

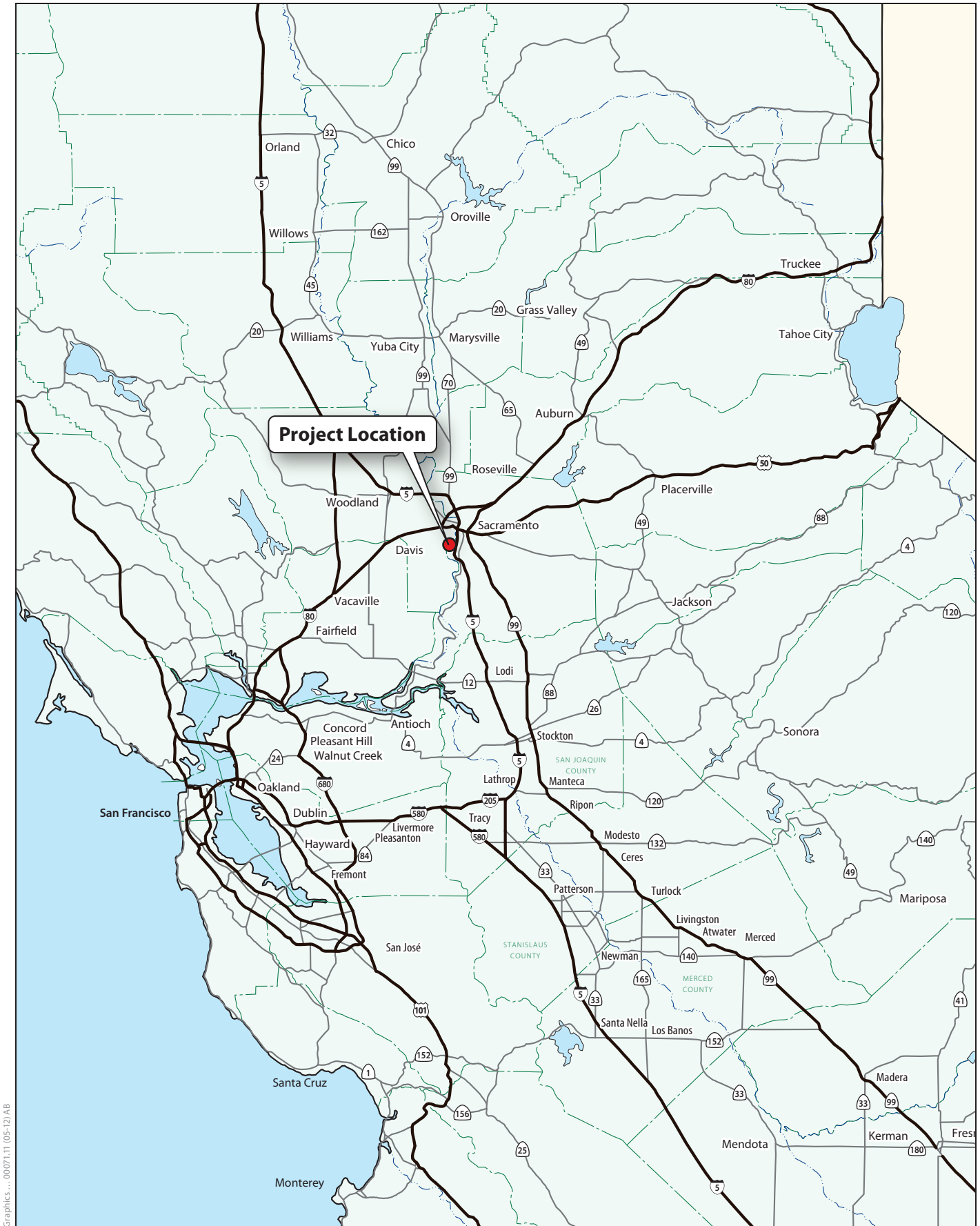
## A.2 Project Description

The West Sacramento Area Flood Control Agency (WSAFCA) is undertaking the Southport Sacramento River Early Implementation Project (“Southport project,” or simply “project”) to construct flood risk–reduction measures along the Sacramento River South Levee in the city of West Sacramento, Yolo County, California. The primary purpose of the Southport project is to provide flood risk management for the entire city of West Sacramento. Secondary purposes of the Southport project are to provide ecosystem restoration and public recreation opportunities that are compatible with flood risk–reduction measures. The location of the project in relation to the surrounding region, and project areas where construction or borrow material excavation would occur, are depicted in Figures 1 and 2. Flood risk-reduction measures proposed for construction are depicted in Figure 2a.

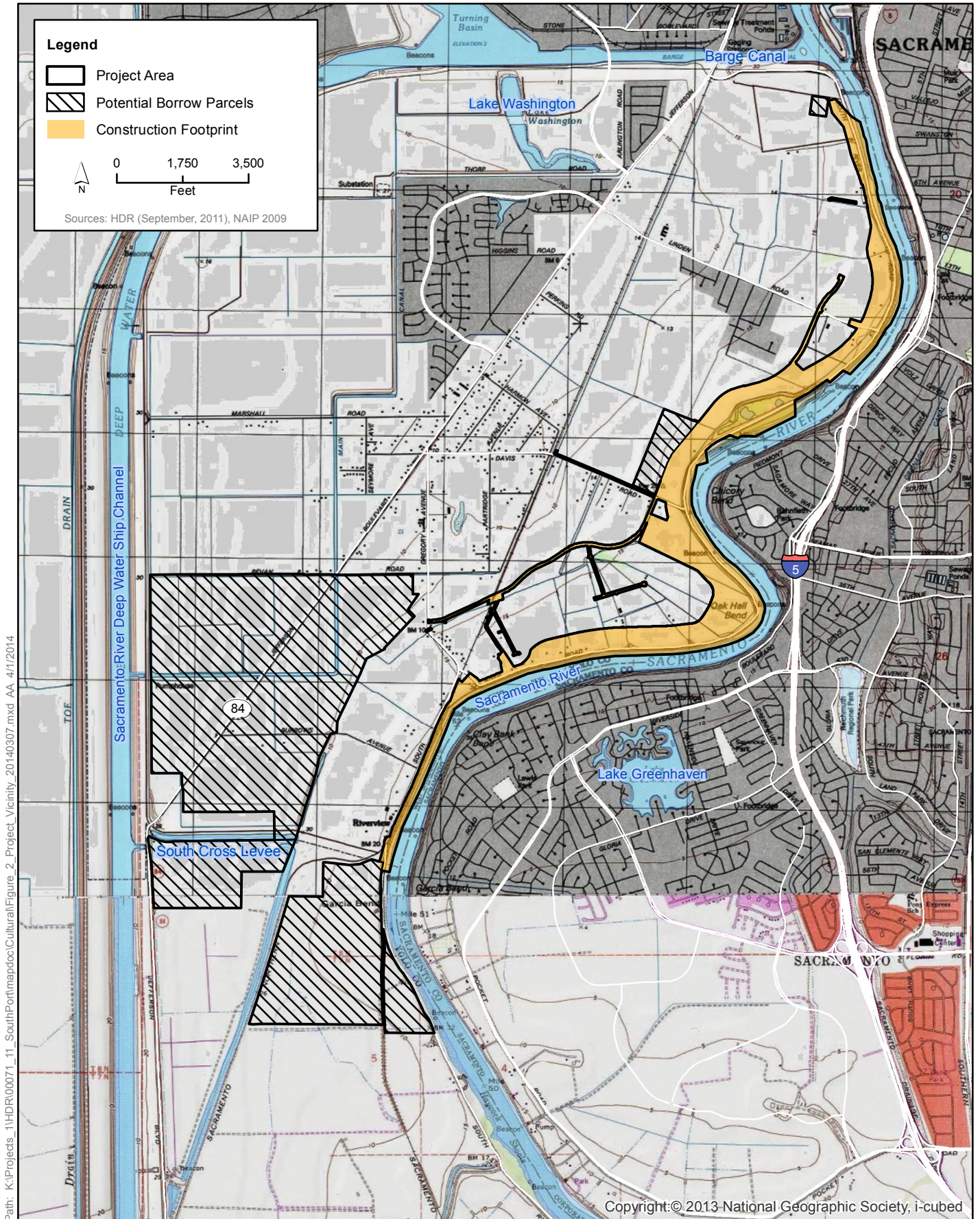
The proposed project is a blend of flood risk–reduction measures that are based on their effectiveness in addressing deficiencies, compatibility with land uses, minimization of real estate acquisition, avoidance of adverse effects, and cost.

The overall project involves the following elements.

- Construction of flood risk–reduction measures, including seepage berms, slurry cutoff walls, setback levees, rock and biotechnical slope protection, and encroachment removal.
- Partial degrade of the existing levee, forming a “remnant levee”.
- Construction of offset areas using setback levees.
- Construction of breaches in the remnant levee to open up the offset areas to Sacramento River flows.
- Offset area restoration.
- Road construction.
- Drainage system modifications.



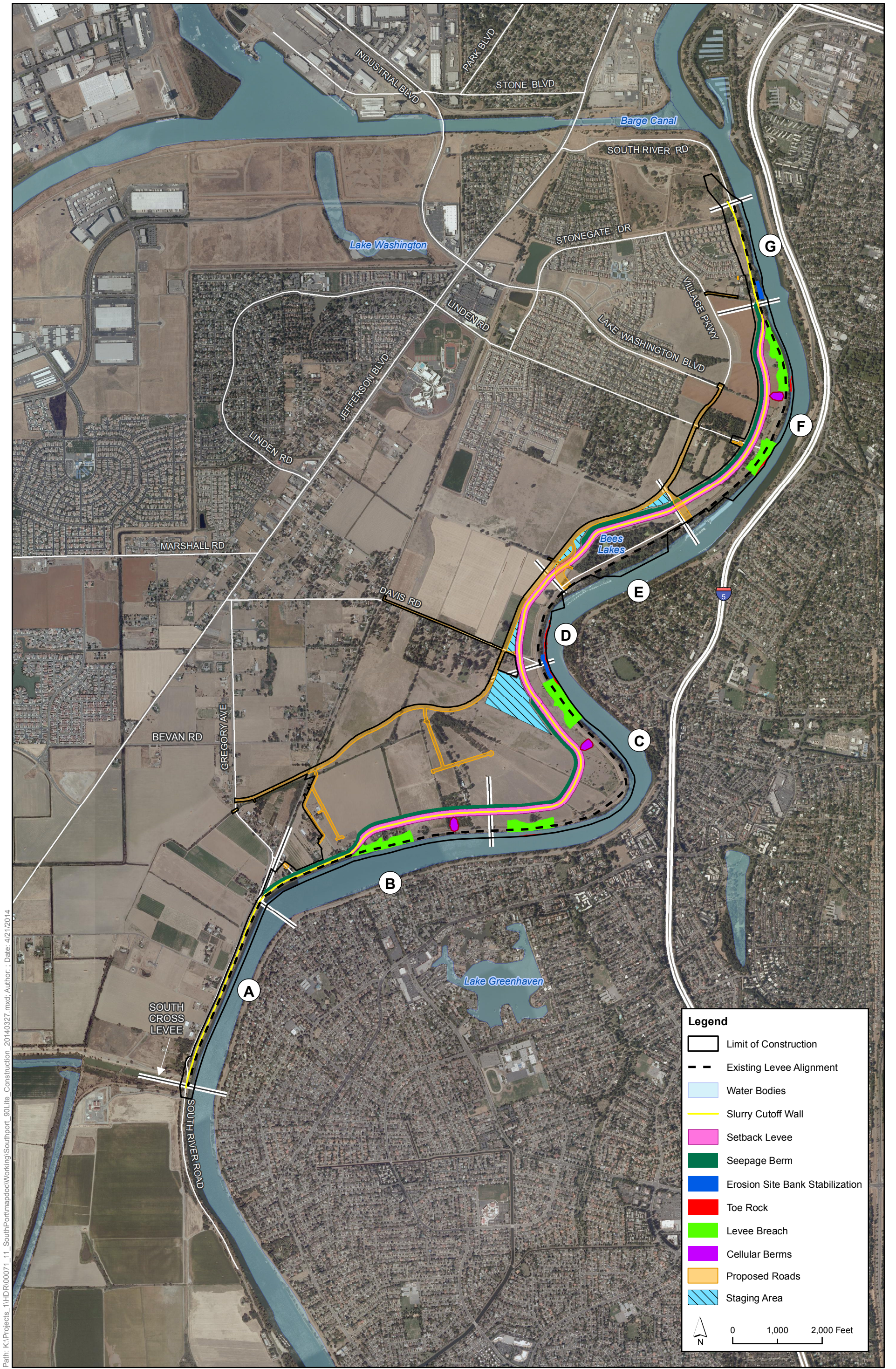
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**Figure 2**  
**Project Vicinity and Boundaries**



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**Legend**

- Limit of Construction
- Existing Levee Alignment
- Water Bodies
- Slurry Cutoff Wall
- Setback Levee
- Seepage Berm
- Erosion Site Bank Stabilization
- Toe Rock
- Levee Breach
- Cellular Berms
- Proposed Roads
- Staging Area

0 1,000 2,000 Feet

N

**Plate 2a**  
**Southport Sacramento River Early Implementation Project Construction Components - Refined APA**

The proposed project includes a combination of setback levees, cutoff walls, and seepage berms (along with other measures) (Table 1).

**Table 1. Flood Risk-Reduction Measures by Segment**

Segment	Flood Risk-Reduction Measures
A	Slurry cutoff wall
B	Slurry cutoff wall and landside seepage berm
C	Setback levee, slurry cutoff wall, and landside seepage berm
D	Setback levee and slurry cutoff wall
E	Setback levee and slurry cutoff wall
F	Setback levee, slurry cutoff wall, and landside seepage berm
G	Slurry cutoff wall

<sup>1</sup> Total length of the Federal levee would be reduced to approximately 5.6 miles from its present length of 5.8 miles due to the landward alignment of the proposed setback levee

Construction of the project would occur in more than one annual construction season, with construction of flood risk–reduction measures beginning in April of 2016, and likely finishing in 2018. Construction and restoration of the offset area would likely continue after 2018, with final remnant levee breaches constructed in 2020. Village Parkway construction and utility relocations would begin in fall of 2015. A description of expected construction activities by construction year is provided below.

### Year 1

- Village Parkway construction and utility relocation would be completed.
- The entire length of the setback levee would be started in Year 1, beginning with the foundation and working platform. Construction of the cutoff wall would follow if weather allows.

### Year 2

- The setback levee cutoff wall and remaining buildup of the setback levee would be constructed to a finished elevation of +40 feet NAVD 88.
- South River Road detour at south end of Segment A.
- Seepage berms would be constructed following completion of the setback levees.
- Segment A and the southern portion of Segment B would be degraded to an elevation of +31 feet NAVD 88, and in Segment G the levee would be degraded to an elevation of +34.5 feet NAVD 88. Cutoff walls would then be constructed in these segments, tying into the setback levee cutoff walls in Segments B and F. The levee crown in Segment A and the southern portion of Segment B would then be built back up to a finished elevation of +39 feet NAVD 88, and the levee in Segment G would be built back up to a finished elevation of +40 feet NAVD 88. The slurry cutoff

wall toe would be at an elevation of -5 feet NAVD 88 through Segments A, B, C, and D; at 0 feet NAVD 88 for Segments E, F, and the southern portion of G; and would be at -67 feet NAVD 88 for the remainder of Segment G.

- The remnant levee in Segments B, C, D, and F would be degraded to an elevation of +30 feet NAVD 88, and would have a 20-foot-wide crown.
- Offset area grading would begin.
- Erosion site repairs at C1, C2, and G3 would be constructed late in the construction season once the remnant levee has been degraded.

### Year 3

- Offset area grading would be completed, with the exception of the cellular berms.
- Breaches N1 and S3 would be constructed. Culverts would be installed through the remnant levee at the other breach locations to allow water to flow into, and drain out of, the offset areas during the interim condition.
- Offset area planting would begin and would continue through Year 6.

### Year 4

- Offset area planting would continue.

### Year 5

- The three remaining breaches and the offset area cellular berms would be constructed, and the southern offset area would be contoured.

### Year 6

- Offset area planting would be completed.

## A.3 National Historic Preservation Act, Section 106 Undertakings

The project requires permits and authorizations from the U.S. Army Corps of Engineers under Section 14 of the Rivers and Harbors Act (33 U.S. Code [USC] Section 408), Section 404 of the Clean Water Act (33 USC Section 1344), and Section 10 of the Rivers and Harbors Act (33 USC Section 403). Because activities authorized under these permits and approvals may affect historic properties, compliance with Section 106 of the National Historic Preservation Act (NHPA, 16 USC Section 470f) is required. The programmatic agreement, attached research design, and *Historic Property Treatment Plan* ("Plan," Attachment B), provide a means of phasing completion of Section 106 management steps for these undertakings.