PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
AND
THE CALIFORNIA OFFICE OF HISTORIC PRESERVATION
REGARDING THE
FOLSOM PLAN AREA SPECIFIC PLAN,
SACRAMENTO COUNTY, CALIFORNIA

WHEREAS, the Sacramento District, United States Army Corps of Engineers ("Corps") under the authority of Section 404 of the Clean Water Act (33 U.S.C. § 1344) may issue permits ("Section 404 Permit") for projects within the proposed Folsom Plan Area Specific Plan ("Specific Plan Area") (the Undertakings), in Sacramento County, California; and

WHEREAS, the City of Folsom, Hospitality Consultants, MJM Properties, Folsom White Rock Investors, FPA Land Development, Javanifard and Zhargami, and Easton Development Company ("Applicants or Permittees") have submitted or will submit applications to the Corps for a Section 404 Permit for their respective individual projects (Project[s]) within the Specific Plan Area and serve as concurring parties this Programmatic Agreement (PA); and

WHEREAS, the Folsom Historical Society, Shingle Springs Band of Miwok Indians, and the United Auburn Indian Community have been contacted and afforded the opportunity to participate in the Section 106 process and this PA; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) was afforded an opportunity to comment or participate in the development of this PA and declined in a letter dated December 2, 2010; and

WHEREAS, the individual Applicants will proceed with Project-specific development independently of one another with a potential build-out of 20 years within the Specific Plan Area; and

WHEREAS, the Corps has determined that the Projects within the Specific Plan Area may have an effect on Historic Properties that are either included in, or are eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the California State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, the Historic Properties include, but are not limited to, several historic districts that span multiple Projects within the Specific Plan Area and are considered regional in scope; and

WHEREAS, the remaining identification, evaluation, determination of effect, and resolution of adverse effects will be carried out separately by each Applicant under the authority of the Corps, which will continue as lead federal agency for each consultation phase, and additional Historic Properties may be identified during the process; and
WHEREAS, this agreement addresses all phases and segments of the Specific Plan Area project, including off-site infrastructure; and

WHEREAS, the signatories of this PA commit to a cooperative relationship and timely review of documentation generated under this PA or subsequent Memoranda of Agreement (MOA); and

WHEREAS, the definitions set forth in 36 CFR 800.16 are incorporated herein by reference and apply throughout this PA; and

WHEREAS, the definitions for signatory parties set forth in 36 CFR 800.6(c)(1), and the definitions for concurring parties set forth in 36 CFR 800.6(c)(3) are incorporated herein by reference and apply throughout this PA; and

WHEREAS, pursuant to Section 404 of the Clean Water Act, the Corps is responsible for the implementation of the stipulations included herein, and as signatories to this PA the Corps and SHPO have the authority to enforce, amend, and terminate this PA; and

WHEREAS, this PA serves as a mitigation requirement of an Environmental Impact Statement prepared for the entire Specific Plan Area, for compliance with the National Environmental Policy Act and will be included as a condition of any Section 404 Permits issued by the Corps in the Specific Plan Area; and

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

STIPULATIONS

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

Stipulation 1
Specific Plan Area of Potential Effects and Pre-Project Resolution of Adverse Effects
(Cultural Context)

A. The Corps has determined and documented the Specific Plan Area of Potential Effects (APE) for the undertakings in consultation with SHPO. SHPO concurred in a letter dated October 19, 2009. The APE is located on the Folsom, Buffalo Creek, Clarksville, and Folsom S.E. 7.5 Minute U.S.G.S. topographic quadrangle maps in T. 9 N., R. 8 E. The APE is bounded by Highway 50 to the north, Prairie City Road to the west, the Sacramento and El Dorado County line to the east, and White Rock Road to the south. In addition, the off-site water transfer alignments, off-site roads, two new interchanges, two interchange improvements, and construction of one new overcrossing along Highway 50 between the current Prairie City Road Interchange and the El Dorado and Sacramento County line are included in the APE. The Specific Plan Area, for which a general Section
404 Permit application (USACE ID# 2007-02159) has been filed, is comprised of several development projects for which specific Section 404 Permit applications have been submitted, or will be submitted, to the Corps. The development projects (Projects) are currently designated as follows:

<table>
<thead>
<tr>
<th>Development Projects</th>
<th>Applicants</th>
<th>USACE ID#</th>
</tr>
</thead>
<tbody>
<tr>
<td>Folsom Heights</td>
<td>Hospitality Consultants</td>
<td>2008-00331</td>
</tr>
<tr>
<td>Folsom South</td>
<td>MJM Properties</td>
<td>2006-00035</td>
</tr>
<tr>
<td>Folsom 138</td>
<td>Folsom White Rock Investors, LLC</td>
<td>2008-00326</td>
</tr>
<tr>
<td>Carpenter Ranch</td>
<td>FPA Land Development</td>
<td>2006-00984</td>
</tr>
<tr>
<td>Hillsborough (Folsom 560)</td>
<td>Easton Development Company</td>
<td>2006-00561</td>
</tr>
<tr>
<td>Prairie City Road Business Park</td>
<td>Easton Development Company</td>
<td>2006-00538</td>
</tr>
<tr>
<td>Javanifard and Zhargami</td>
<td>Javanifard and Zhargami</td>
<td>2007-01072</td>
</tr>
<tr>
<td>Sacramento Country Day School</td>
<td>TBD</td>
<td>2003-00732</td>
</tr>
<tr>
<td>Backbone Infrastructure (for each of the above projects)</td>
<td>City of Folsom</td>
<td>2007-02159</td>
</tr>
<tr>
<td>Offsite Water Line</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offsite Roads</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prairie City Interchange</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oak Avenue Interchange</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scott Road Interchange</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Empire Ranch Interchange</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rowberry Crossing</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

B. The Specific Plan’s APE includes all areas where effects could occur from construction of the Projects listed above. Future project design changes may require redefining the APE and the development projects within it. Each Section 404 Permit application shall have its own Project-specific APE designated by the Corps and approved by SHPO. If some of the Projects are merged or segregated, a Project will be defined as the area to which a specific Section 404 Permit application applies. The Corps shall consult with SHPO in a timely manner to amend the boundaries of the APE. Amendment of the APE, by agreement of the signatories, shall not require amendment of this PA. Project-specific APEs shall not extend beyond the Section 404 permit area as designated by the Corps.

C. Because each Project will require an individual Section 404 permit application and the Projects will be independent of one another, the Corps has determined that the resolution of adverse effects to Historic Properties that span more than one individual 404 permit application must be completed before the Corps makes a decision on any affected Section 404 permit applications. Therefore, the Corps will ensure that adverse effects are resolved prior to the issuance of separate Section 404 permits for each Applicant.

D. Using the previous research conducted on historic districts to date, the evaluation of significance, a portion of the resolution of adverse effect (the archival research and documentation), and the development of a Work Plan for the remaining identification
and evaluation shall be carried out in advance of any Section 404 permit approval. The work will be conducted at a level (determined adequate by the Corps and SHPO) that will allow the remaining resolution of adverse effects (data recovery/HPTP of archaeological features and mapping) to be carried out on a Project-specific basis by individual applicants independently of one another (see Stipulation 5).

E. The Preliminary Historic Properties Synthesis (PHPS) resulting from this work shall include the following components:

1. National Register evaluation of significance for the Rhodes' Diggings Mining District;
2. restatement of the previous Determination of Eligibility of the Alder Creek Corridor Mining District, and a review of other districts previously documented within the Specific Plan Area APE;
3. historic context statement for the Specific Plan Area, based on research conducted to date, supplemented with additional research, if necessary;
4. delineation of the boundaries of historic districts, sites, and features based on research conducted to-date, supplemented with additional research, if necessary;
5. results of previously conducted archival research for the historic mining districts;
6. research design and work plan to guide development of property-specific HPTPs under individual MOAs (see Stipulation 5); and
7. Professional standards and guidelines for all work carried out under the PA.

This PHPS would not include any analysis relative to the larger "paper districts" known as the Folsom Mining District and American River Placer Mining District.

F. This PHPS shall also form the basis for a Historic Properties Synthesis for resources of the historical period that will serve as a mitigation document (Historic Properties Synthesis) for the Specific Plan Area (see Stipulation 7).

**Stipulation 2**

**Review of Preliminary Historic Properties Synthesis**

A. The Corps shall ensure that the draft PHPS is submitted to the SHPO for review and comment. SHPO shall have 30 calendar days after receipt of the draft Preliminary Historic Properties Synthesis to comment to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and incorporated into the final Preliminary Historic Properties Synthesis, which may be incorporated into the Work Plan.

B. The Corps shall also make a reasonable and good-faith effort to afford the Native American concurring parties an opportunity to review the draft PHPS in accordance with Stipulation 9. The Corps shall also make a reasonable and good-faith effort to afford other concurring parties (such as applicants or historical societies) an opportunity to review the draft PHPS. Concurring parties shall have 30 calendar days after receipt of the
draft PHPS to comment to the Corps. The Corps shall consider comments received during this time period and incorporate such comments into the draft PHPS to the extent practicable, however the Corps is not required to revise the PHPS in response to any comments received.

C. The Corps shall make every effort to resolve disputes that may arise from conflicting comments by SHPO, or concurring parties via telephone conversations or other informal means of communication. In the event that disputes are not easily remedied, the Corps shall resolve them in accordance with Stipulation 15. Failure by SHPO or any of the concurring parties to comment within the 30 calendar day time period shall not preclude the Corps from allowing the PHPS to be finalized.

1. If the PHPS is revised in response to comments, the Corps shall provide the revised PHPS to SHPO and the concurring parties for review. SHPO and the concurring parties shall provide any comments on the revised PHPS to the Corps within 30 calendar days. If no comments are provided within 30 calendar days, concurrence among all parties will be assumed.

2. Once the signatories determine that the PHPS is adequate, the Corps shall authorize the Applicant(s) to proceed with the Work Plan contained within the PHPS before issuing any Section 404 Permits. Within 30 days of approving the final PHPS, the Corps shall provide a copy of the final document to SHPO and the concurring parties."

Stipulation 3
Project-Specific APE Identification, Evaluation, and Mitigation

A. All applications for Project-specific 404 permits in the Specific Plan Area will require that the APE for that permit area be drawn (or re-drawn) by the Corps and approved by SHPO as a subset of the larger Specific Plan Area APE. This subset of the Specific Plan Area APE is hereafter referred to as the "Project APE." Where the Project APE bisects or is immediately adjacent to an archaeological feature, the Applicant shall be responsible for identification, evaluation, and mitigation of only the portion of the feature that is situated within the Applicant’s Project APE. Where no direct or indirect effects to Historic Properties are expected (such as open space or conservation easements), the Corps may elect to exclude certain portions of a permit area from the Project APE, or may assume eligibility and forego evaluations of significance. The Project APE shall include the area of direct and indirect effect.

B. A geoarchaeological overview of the Project APE shall be carried out to assess the likelihood for buried Holocene era cultural deposits. Focused geoarchaeological studies shall be conducted for any portions of the Project APE that the overview indicates have a high potential for buried archaeological material.

C. The Applicants shall acquire an updated records and literature search from the North Central Information Center at California State University, Sacramento prior to
commencing with field surveys. Records searches shall be acquired no more than six months prior to commencing each field survey.

D. All areas in the APE not previously surveyed and areas where previous surveys are deemed by the Corps, in consultation with the SHPO, to be inadequate or obsolete will be intensively surveyed using pedestrian transects no more than 15 – 20 meters apart where feasible and in accordance with the research design and work plan of the PHPS. Transects of more than 20 meters apart are permissible if topography and site conditions either preclude 15 – 20 meter transects, or where wider transects will yield adequate survey results. This survey will also include any additional areas that may need to be added to the APE as a result of changes in the project design, including borrow areas, haul roads, staging areas, extra work space, and off-site infrastructure related to the undertaking. The Applicant shall complete and report the results of all required intensive surveys of the APE in a manner consistent with the "Secretary of the Interior's Standards and Guidelines for Identification" (48 FR 44720-23) and PHPS and take into account the National Park Service’s publication, "The Archeological Survey: Methods and Uses" (1978: GPO stock #024-016-00091). If identified cultural resources can be evaluated without subsurface testing, and a determination of eligibility can be made by the Corps based on the results of the survey and prepared contexts and historic documentation, then the Corps may request SHPO concurrence with those eligibility determinations at that time. Reports produced as a result of intensive surveys shall be submitted by the Corps to SHPO for review. SHPO shall have 30 calendar days after receipt to provide comments to the Corps. Review of inventory or survey reports by Native American tribes or individuals shall be in accordance with Stipulation 10.

E. Survey recording shall be in accordance with the PHPS and include archaeological sites, linear features, isolates, and re-recording of previously recorded sites as necessary. In addition, the survey shall ensure that historical structures and buildings, and historical engineering features are recorded in addition to archaeological sites. Such property types include, but are not limited to: commercial, residential, and ecclesiastical buildings, roads, trails, bridges, culverts, and agricultural features, including ditches. Recording of historic structures and buildings shall be prepared using the most current revision of the California Office of Historic Preservation's DPR 523a, 523b, and 523j (Primary; Building, Structure, Object Record; and Location Map) Historic Resources Inventory forms.

F. Archaeological sites will be recorded in accordance with the PHPS and will use, at a minimum, DPR 523a, 523c, 523j, and 523k (Primary Record, Archaeological Site Record, Location Map, and Site Sketch Map) Historic Resources Inventory forms. Previously recorded sites will be updated using appropriate DPR 523 forms. Isolates will be numbered sequentially, plotted on a map, recorded on a single table within the report, and documented with DPR 523a and DPR 523j (Primary Record and Location Map) forms. Non-linear sites or features that extend outside of the APE will be examined in their entirety unless access to the land outside the APE is denied. In the event access cannot be gained, the Corps will consult with SHPO regarding appropriate means of evaluating a given site. Linear resources (i.e., railroad, road, trail, ditch, etc.) that appear on GLO plat maps or are known from other archival data to be potentially significant, or
which have associated features or dateable artifacts will be recorded on DPR 523 site forms, including the DPR 523e Linear Record. Linear resources not mentioned on GLO plat maps or that appear on GLO plat maps or aerals, but which are not associated with features or dateable artifacts, and therefore do not appear to be significant on the basis of known archival data, will be treated as “isolated road segments” and will be recorded using only DPR523 Primary Record and Location Map forms and will be listed in tabular form in the report. Collected location data will include, at a minimum, two (2) separate GPS points at both ends of the linear feature within the APE. GPS data shall be collected in accordance with the standards provided in the PHPS.

G. The Corps shall ensure that the Applicants prepare Evaluation Plans (EP) to guide evaluation of cultural resources within the APE of each development project that have not been previously evaluated using National Register eligibility criteria set forth in 36 CFR 60.4. The Corps shall ensure that EPs are consistent with the “Secretary of the Interior's Standards and Guidelines for Evaluation” (48 FR 44723-26) and the PHPS. Individual EPs will be developed to address different categories of potentially eligible resources (prehistoric archaeological sites, historic archaeological sites, buildings, structures, objects, and districts) within a development project. An EP shall be used whenever the Corps, in consultation with the SHPO, determines that a cultural resource should be evaluated and use of the EP is essential to determine the boundaries and data potential of the resource. Any archaeological testing shall be limited to disturbing no more than 20% of the surface area of the resource and shall be just sufficient to determine a site’s eligibility for inclusion in the National Register.

H. The Corps shall submit the EP for concurrent review to the SHPO and any appropriate Native American tribes/individuals (in accordance with Stipulation 9). Reviewers shall have 30 calendar days after receipt to comment on the draft EP. The Corps shall consider any comments received within that time period. If the Corps cannot concur with comments made by SHPO, the Corps will resolve the dispute in accordance with Stipulation 15. Failure of the SHPO or tribes/individuals to comment within the specified time period shall not preclude the Corps from allowing the draft EP to be finalized and implemented in accordance with the terms of this stipulation. The Corps shall make every effort to resolve disputes that may arise from conflicting comments by the concuring parties via telephone conversations or other informal means of communication. The Corps will take comments from concuring parties into consideration; however, the Corps is not required to revise the EP in response to any comments from concurring parties. The Corps shall ensure that the SHPO is provided with copies of the final EP within 30 days of receipt of all comments.

I. The Corps, in consultation with SHPO, shall ensure that determinations of eligibility are made in accordance with the National Register eligibility criteria set forth in 36 CFR 60.4 for all resources within the APE, including additional areas that may be affected by changes in the project design, borrow areas, haul roads, staging areas, extra work space, and other ancillary areas related to the undertaking. If the Corps and the SHPO cannot agree on the National Register eligibility of a resource, the Corps shall obtain a determination from the Keeper of the National Register in accordance with 36 CFR 63.
The determination of the Keeper shall be final for the purposes of this PA. All cultural resources determined eligible are Historic Properties as defined in 36 CFR 800.16(l)(1).

J. The Corps shall ensure that copies of draft evaluation reports are submitted concurrently to the SHPO and any appropriate concurring parties for review and comment. The Corps shall not submit documentation prepared for one applicant's project-specific APE to another applicant for review. Native American concurring parties shall be considered reviewing parties for this subsection in accordance with Stipulation 9.

K. Reviewing parties or agencies shall respond in a timely manner and no later than 30 calendar days from the receipt of the document. Failure by any reviewer to comment within this time period shall not preclude the Corps from allowing draft reports to be finalized. Within 30 days of approving the final survey and evaluation reports, the Corps shall provide a copy of the final documents to all reviewers named in this Stipulation.

L. The Corps shall ensure that historic, architectural, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of a person or persons meeting qualifications set forth in the Secretary of the Interior’s Professional Qualification Standards (36 CFR 61).

Stipulation 4
Project-Specific Determinations of Effect

A. The Corps shall apply the Criteria of Adverse Effect pursuant to 36 CFR 800.5(a) (1) to all Historic Properties within the APE that will be affected by the Project. Determinations of effect (DoE) shall be made in consultation with the SHPO and other interested parties. Separate DoEs shall be produced for each development project listed in Stipulation 1A.

B. The Corps shall submit the DoE to the SHPO for review and comment. SHPO shall have 30 calendar days after receipt of the DoE to provide comments to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and incorporated into the final DoE. If SHPO fails to respond within 30 days, the Corps shall assume concurrence and proceed.

Stipulation 5
Preparation of Project-Specific Memoranda of Agreement, Historic Property Treatment Plans, and Data Recovery Plans

A. The Corps, in consultation with SHPO, shall ensure that a Memorandum of Agreement (MOA) is developed, signed, and implemented for each development Project where there will be adverse effects to Historic Properties (eligible resources). The MOA will contain stipulations to mitigate anticipated effects on Historic Properties that will result from a specific Project and will require compliance with the Work Plan in the Preliminary Historic Properties Synthesis. The MOA for a specific development project will require
development of a Historic Property Treatment Plan (HPTP) for Historic Properties that will be avoided and for Historic Properties that cannot be avoided and were determined eligible under criteria specified in 36 CFR 60.4 (a) through (d). The MOA will require development of a Data Recovery Plan for each eligible archaeological site within the development project that cannot be avoided and was determined eligible under criteria (d) (36 CFR 60.4). The MOA may require preparation of a Construction Monitoring Plan (CMP) and a Discovery Evaluation Plan (DEP) if there is a potential for encountering buried archaeological material during construction.

B. The HPTP will discuss and justify the chosen approaches to the treatment of Historic Properties and those treatment options considered, but rejected. The preferred treatment approach is to avoid Historic Properties. If preservation of part or all of any Historic Property is proposed, the treatment plan will include discussion of the following:

1. Description of the area or portions of the Historic Properties to be preserved in-place, and an explanation of why those areas or portions of sites were chosen;
2. Explanation of how the Historic Properties will be preserved in-place, including both legal and physical mechanism for such preservation;
3. A plan for monitoring and assessing the effectiveness of mechanisms to preserve the Historic Properties; and
4. A plan for minimizing or mitigating future adverse effects on the Historic Properties if preservation in-place mechanisms prove to be ineffective.

C. When avoidance is not feasible, the Corps, in consultation with SHPO, shall ensure that appropriate measures are developed in the HPTP that are designed to minimize and/or mitigate project-related effects to Historic Properties. For properties eligible under criteria specified in 36 CFR 60.4 (a) through (d), mitigation other than data recovery may be considered in the treatment plan (e.g., HABS/HAER recordation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, treatment plans shall include specifications (including content and number of copies) for a publication for the general public.

D. When data recovery for archaeological sites is required by the MOA, the Corps in consultation with SHPO shall ensure that the Applicant develops a Data Recovery Plan that is consistent with the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation and the ACHP’s “Recommended Approach for Consultation on Recovery of Significant Information from Archaeologist Sites” (ACHP May 18, 1999). Where archaeological features requiring data recovery straddle property lines such that a portion of a feature exists in more than one Project APE, then the Applicant shall be responsible for the data recovery of that portion that exists within his or her Project APE only. Data Recovery Plans prepared for this undertaking shall specify, at a minimum:

1. The Historic Property, or properties, or portions of properties (archaeological sites eligible under criterion d) where data recovery is to be carried out;
2. Any Historic Property, or properties or portions of properties that will be destroyed with data recovery;
3. The research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
4. The methods to be used, with an explanation of their relevance to the research questions;
5. The methods to be used in analysis, data management, and dissemination of data, including a schedule;
6. The proposed disposition of recovered materials and records;
7. Proposed methods by which the parties to the Programmatic Agreement will be kept informed of the work and afforded the opportunity to participate; and
8. A proposed schedule for the submission of progress reports to the Corps and SHPO.

Stipulation 6

Review of HPTPs and Data Recovery Plans

The Corps shall ensure that draft HPTPs and Data Recovery Plans are submitted to the SHPO, and appropriate Native American tribes and individuals (in accordance with Stipulation 10) for review and comment. The Corps may also request comment by the ACHP. Reviewers shall have 30 calendar days after receipt of the draft HPTP to provide comments to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and, where feasible, incorporated into the final HPTP or Data Recovery Plan. The Corps shall make every effort to resolve disputes that may arise from conflicting comments by the signatories or concurring parties via telephone conversations or other informal means of communication. In the event that disputes are not easily remedied, the Corps shall resolve them in accordance with Stipulation 15. The Corps will take comments from concurring parties into consideration, but is not required to revise the draft HPTPs and Data Recovery Plans as a result of any such comments. Failure to comment within this time period shall not preclude the Corps from allowing the HPTP to be finalized and implemented. Within 30 days of approving the final survey and evaluation reports, the Corps shall provide a copy of the final documents to all reviewers named in this Stipulation.

A. If any reviewing party fails to respond in a timely manner, then the Corps shall proceed without concurrence.

B. If the HPTPs or Data Recovery Plans are revised as a result of comments, the Corps shall afford the SHPO and appropriate concurring parties 30 calendar days to review and comment on the revised documents. If no comments are received within 30 calendar days, concurrence among the parties will be assumed.

C. Once the Signatories determine that an HPTP or Data Recovery Plan is adequate, the Corps shall issue authorization to proceed with the implementation of the Plan.

D. If a specific development project includes a portion of an eligible historic district, the SHPO will not approve the HPTP for that development project until all HPTPs of other development projects containing a portion of said district have been approved unless Stipulation 1 has been satisfied.
E. Final drafts of the HPTP and all Data Recovery Plans will be provided to SHPO and the ACHP.

Stipulation 7
Technical Reports and Historic Properties Synthesis

A. The results of the implementation of the MOA, HPTP, and DRP shall be documented in a comprehensive confidential technical report(s) that follow the guidelines of the Secretary of the Interior and the California Office of Historic Preservation.

B. As Project-specific surveys, evaluation, and data recovery studies are carried out for individual Projects, results that pertain to the historical period will be incorporated into the cultural context in the Preliminary Historic Properties Synthesis report (HPSR) with technical reports (Stipulation 7A) attached as appendices in sequence. Studies that focus solely on resources from the prehistoric period will be reported separately, via project-specific technical reports. Information generated during the early planning process and as presented in the Preliminary Historic Properties Synthesis will be modified as more data are generated during mitigation. The HPSR will be a dynamic document which may require revisions throughout the course of the build-out of the Specific Plan.

C. The Corps shall ensure that the revised HPSR is submitted to the SHPO and appropriate concurring parties for review and comment. Reviewers shall have 30 calendar days after receipt of the draft reports to provide comment to the Corps. Review by Native American tribes or individuals shall be in accordance with Stipulation 9. The Corps shall ensure that any comments received during this time period are taken into account and, where feasible, incorporated into the final reports.

Stipulation 8
Review of Historic Properties Synthesis Report

The Corps shall ensure that the revised HPSR is submitted to the SHPO and appropriate concurring parties for review and comment. Reviewers shall have 30 calendar days after receipt of the draft reports to provide comment to the Corps. Review by Native American tribes or individuals shall be in accordance with Stipulation 10. The Corps shall ensure that any comments received during this time period are taken into account and, where feasible, incorporated into the final reports.

Stipulation 9
Permissions to Proceed With Construction

A. The Applicants shall be allowed to proceed with construction following compliance with all pertinent requirements of the permit conditions under any of the following terms.
1. the Corps and SHPO have determined that there are no cultural resources within the APE for a particular construction segment; and

2. the Corps and SHPO have determined that there are no historic properties within the APE for a particular construction segment; or

3. the Corps after consultation with the SHPO and interested persons has implemented an adequate treatment plan for the construction segment, and
   (a) the fieldwork phase of the treatment option has been completed;
   (b) the Corps has accepted a summary of the fieldwork performed and a reporting schedule for that work.

B. In the event the conditions in Stipulation 9 have been met, but the development project includes a portion of a National Register-eligible district that will be adversely affected until all development projects that include a portion of that district have completed the requirements of Stipulation 1 and 9.

Stipulation 10
Project-Specific Public and Native American Involvement

A. In consultation with the appropriate Indian tribes, the Corps will identify Historic Properties of traditional religious and cultural importance.

B. The Corps shall seek comments from all potentially interested Native American tribes in light of the guidance provided in National Register Bulletin 38 in making determinations of eligibility for any Traditional Cultural Properties as these are defined in Bulletin 38. Those Native American tribes or individuals need not be concurring parties to this PA. All reviewers shall have 30 calendar days after receipt to provide comments to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and, where feasible, incorporated into the final survey and evaluation reports. If no response from Native American tribes is received within 30 days of notification, then the Corps may proceed without consultation.

C. Pursuant to 36 CFR 800.6(c)(2)-(3), the Corps shall consider requests by others to become concurring parties to this Programmatic Agreement.

D. The interested public, including Native American tribes, will be invited to provide input on the identification, evaluation, and proposed treatment of Historic Properties. Depending on the specific nature of the undertaking, this will be done through letters of notification, public meetings, and site visits.

E. The Corps shall make a reasonable and good-faith effort to ensure that the Native American individuals and tribes identified as concurring or interested parties will be invited to participate in the development and implementation of the terms of this PA,
including inventory reports, evaluation plans and reports, and during the resolution of adverse effect (MOA, HPTP, CMP, DEP) for those resources within each APE that are either exclusively or partially affiliated with prehistoric or ethnographic resources. Reviewers shall respond in a timely manner and no later than 30 calendar days from the receipt of the document. Failure by any reviewer to comment within this time period shall not preclude the Corps from proceeding or allowing draft reports to be finalized. The Corps shall ensure that all Native American reviewers shall expeditiously receive copies of all final survey and evaluation reports.

Stipulation 11
Modifications and Additions to Off-Site Infrastructure

A. Identification and Evaluation

1. If rerouting of off-site linear infrastructure (roads, water supply lines, etc.) becomes necessary or if additional off-site infrastructure is proposed in areas outside the Project APE that have not been previously surveyed for Historic Properties, the Corps shall ensure that the provisions of Stipulation 1 are met and that the new APE of the proposed reroute or unsurveyed areas is inventoried and that any properties located within those new APEs that may be affected by the undertaking are evaluated.

2. Identification and evaluation of such properties will be carried out in the manner specified in Stipulation 2(C-L).

B. HPTP and/or Data Recovery Plan

1. Where Historic Properties within a new APE for rerouted linear infrastructure or new off-site infrastructure may be affected by the undertaking, the Corps shall ensure that an HPTP and/or Data Recovery Plan, as appropriate (see Stipulation 5), is prepared.

2. The HPTP and/or Data Recovery Plan shall be prepared in the manner specified in Stipulation 5, inclusive.

3. Review of the HPTP and/or Data Recovery Plan shall proceed in the manner specified in Stipulation 6.

C. The Corps may authorize construction in any area subject to the provisions of this stipulation after the Corps and the SHPO have consulted and agreed in writing that such construction either will not affect Historic Properties, or that the area does not contain Historic Properties that will be adversely affected. If neither of these is the case, the Corps shall notify the Applicant that they may proceed with construction when the conditions in the Permit, and Stipulation 10 have been met.

Stipulation 12
Discovery of Unanticipated Historic Properties

If potentially National Register-eligible resources are discovered during construction, ground disturbing activities will cease until the provisions of 36 CFR 800.13(b) (Discoveries without prior planning) are met. The Corps will provide the SHPO and the Council an
opportunity to review and comment on proposed treatment in accordance with Stipulation 7. The Corps will contact the SHPO by facsimile machine, telephone, and/or email within 48 hours of the discovery. The SHPO has 48 hours to respond by facsimile machine, telephone, and/or email following initial contact by the Corps.

**Stipulation 13**

**Curation**

The Corps will ensure that all cultural materials and associated records resulting from identification, evaluation, and treatment efforts conducted under this PA shall be properly maintained until analyses specified in the Data Recovery Plan are complete, except as specified in Stipulation 14. Should the Applicants agree to curate the cultural materials and associated records after all analysis is completed, they shall be curated in conformance with 36 CFR 79.

**Stipulation 14**

**Treatment of Human Remains and Associated Objects**

The Corps will ensure that Native American human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking are treated in accordance with the requirements of Section 7050.5 of the California State Health and Safety Code, Section 5097.98 of the California Public Resources Code, and Assembly Bill 2641.

**Stipulation 15**

**Dispute Resolution**

A. Should the SHPO object within 30 calendar days to plans provided for review pursuant to this PA or to actions proposed or carried out pursuant to this PA, the Corps and SHPO shall consult to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the ACHP in accordance with procedures specified in 36 CFR 800.7.

B. The Corps’s responsibility to carry out all actions required by this PA that are not the subject of the dispute shall remain unchanged.

**Stipulation 16**

**Amendments, Noncompliance, and Termination**

A. If any signatory believes that the terms of this PA cannot be carried out or are not being met, or that an amendment to its terms should be made, that signatory will immediately consult with the other signatory to consider and develop amendments to this PA pursuant to 36 CFR 800.6(c)(7).
B. If this PA is not amended as provided for in this stipulation, any signatory may terminate it. The party terminating the PA will provide the other signatory and concurring parties with an explanation in writing of the reasons for termination in accordance with 800.6(c)(8). Concurring parties may not terminate or amend this PA.

C. If this PA is terminated and the Corps determines that the undertaking will proceed, the Corps shall comply with the requirements of 36 CFR 800.3-800.6.

Stipulation 17
Duration of the PA

A. If the project has not been implemented within five (5) years of the date of execution of the PA and the PA has not been terminated, the signatories shall consult on a date not less than 180 days prior to the tenth anniversary of this PA to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment, or termination. If the PA should be terminated because the undertakings no longer meets the definition of an “undertaking” set forth in 36 CFR 800.16(y), Stipulation 11 shall apply.

B. This PA will be in effect through the Corps’s implementation of the undertakings, and will terminate and have no further force or effect when the Corps, in consultation with SHPO, determines that the terms of this PA have been fulfilled in a satisfactory manner and/or Corps involvement in the project has ended. The Corps will provide the other SHPO and concurring parties with written notice of its determination and of termination of this PA.

C. The Corps shall be responsible for monitoring the work being performed under this PA, including ensuring that all mitigation documentation is incorporated into the Historic Properties Synthesis. The Corps is responsible for initiating consultations with SHPO in advance of expiration of this PA, in accordance with Stipulation 17 A, above.

Stipulation 18
Effective Date

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

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

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
By: [Signature] Date: 29 Jun 11
Name: Michael S Jewell
Title: Chief, Regulatory Division

CALIFORNIA OFFICE OF HISTORIC PRESERVATION
By: [Signature] Date: 6 Jul 2011
Name: Milford Wayne Donaldson, FAIA
Title: California State Historic Preservation Officer

CONCURRING PARTIES:

FOLSOM SOUTH AREA GROUP
By: [Signature] Date: May 31, 2011
Name: Ardie Zahedani
Title: Authorized Representative

CITY OF FOLSOM
By: [Signature] Date: May 31, 2011
Name: David E. Miller, AICP
Title: Community Development Director
FOLSOM HISTORICAL SOCIETY
By: [Signature] Date: 6-25-11
Name: Patrick Maxfield
Title: President

SHINGLE SPRINGS BAND OF MIWOK INDIANS
By: ______________________________ Date: ______________
Name: ______________________________
Title: ______________________________

UNITED AUBURN INDIAN COMMUNITY
By: ______________________________ Date: ______________
Name: ______________________________
Title: ______________________________
FIRST AMENDED
PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
AND
THE CALIFORNIA OFFICE OF HISTORIC PRESERVATION
REGARDING THE
FOLSOM PLAN AREA SPECIFIC PLAN,
SACRAMENTO COUNTY, CALIFORNIA

WHEREAS, this First Amended Programmatic Agreement (FAPA) fully supersedes all provisions of the
"Programmatic Agreement Between the U.S. Army Corps of Engineers (Corps) and the California State Historic
Preservation Officer (SHPO) regarding the Folsom Plan Area Specific Plan, Sacramento County, California." executed on July 13, 2011; and

WHEREAS, the Sacramento District of the Corps, under the authority of Section 404 of the Clean Water
Act (33 U.S.C. § 1344) may issue permits ("Section 404 Permits") (the Undertakings), for projects within the
proposed Folsom Plan Area Specific Plan ("Specific Plan Area") in Sacramento County, California; and

WHEREAS, multiple project proponents and local agencies ("Applicants or Permittees") have submitted or
will submit applications to the Corps for a Section 404 Permit for their respective individual projects (Project[s])
within the Specific Plan Area and serve as Concurring parties to this FAPA; and

WHEREAS, it is the intent of the Corps, the SHPO and the Applicants to provide for the uniform treatment
of, and to address the cumulative effects to, Historic Properties through the implementation of this amendment; and

WHEREAS, the Folsom Historical Society, Shingle Springs Band of Miwok Indians, The Wilton
Rancheria, and the United Auburn Indian Community have been contacted and afforded the opportunity to
participate in the Section 106 process and this FAPA; and

WHEREAS, the Advisory Council on Historic Preservation (AHP) was afforded an opportunity to
comment or participate in the development of the PA and declined in a letter dated December 2, 2010; and

WHEREAS, in accordance with Stipulation 16 of the original PA, the PA is hereby amended by the
Signatories without further consultation with the ACHP; and

WHEREAS, the individual Applicants will proceed with Project-specific development independently of
one another with a potential build-out of 20 years within the Specific Plan Area; and

WHEREAS, the Corps has determined that the Projects within the Specific Plan Area may have an effect
on Historic Properties that are either included in, or are eligible for inclusion in the National Register of Historic
Places (NRHP) and has consulted with the SHPO, pursuant to Section 106 of the National Historic Preservation Act
of 1966, as amended (NHPA) and its implementing regulations codified in 36 CFR Part 800 (August 2004); and

WHEREAS, the Historic Properties include, but are not limited to, several historic districts that span
multiple Projects within the Specific Plan Area and are considered regional in scope; and

WHEREAS, the remaining identification, evaluation, determination of effect, and resolution of adverse
effects will be carried out separately by each Applicant under the authority of the Corps, which will continue as lead
federal agency for each consultation phase, and additional Historic Properties may be identified during the process; and

WHEREAS, this agreement addresses all phases and segments of the Specific Plan Area project, including
off-site infrastructure; and
WHEREAS, the signatories of this FAPA commit to a cooperative relationship and timely review of documentation generated under this FAPA; and

WHEREAS, the definitions set forth in 36 CFR 800.16 are incorporated herein by reference and apply throughout this FAPA; and

WHEREAS, the definitions for signatory parties set forth in 36 CFR 800.6(c)(1), and the definitions for concurring parties set forth in 36 CFR 800.6(c)(3) are incorporated herein by reference and apply throughout this FAPA; and

WHEREAS, pursuant to Section 404 of the Clean Water Act, the Corps is responsible for the implementation of the stipulations included herein, and as signatories to this FAPA the Corps and SHPO have the authority to enforce, amend, and terminate this FAPA; and

WHEREAS, this FAPA fulfills Mitigation Measure 3A.5-1 of the Environmental Impact Statement prepared for the entire Specific Plan Area for which a Record of Decision was issued on 11 August 2011, for compliance with the National Environmental Policy Act and will be included as a condition of any Section 404 Permits issued by the Corps in the Specific Plan Area; and

WHEREAS, this FAPA and its subsequent Historic Property Treatment Plan and property-specific Treatment Plans, provide for the means by which resolution of adverse effect to Historic Properties will occur;

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

STIPULATIONS

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

Stipulation 1
Professional Qualifications Standards

The Corps shall ensure that historic, architectural, and archaeological work conducted pursuant to this FAPA is carried out by, or under the direct supervision of a person or persons meeting qualifications set forth in the Secretary of the Interior's Professional Qualification Standards in accordance with 36 CFR Part 61.

Stipulation 2
Specific Plan Area of Potential Effects and Pre-Project Resolution of Adverse Effects (Cultural Context)

A. The Corps has determined and documented the Specific Plan Area of Potential Effects (APE) for the Undertakings in consultation with SHPO. SHPO concurred in a letter dated October 19, 2009. The APE is located on the Folsom, Buffalo Creek, Clarksville, and Folsom S.E. 7.5 Minute U.S.G.S. topographic quadrangle maps in T. 9 N., R. 8 E. The APE is bounded by Highway 50 to the north, Prairie City Road to the west, the Sacramento and El Dorado County line to the east, and White Rock Road to the south. In addition, the off-site water transfer alignments, off-site roads, two new interchanges, two interchange improvements, and construction of one new overcrossing along Highway 50 between the current Prairie City Road Interchange and the El Dorado and Sacramento County line are included in the APE (Appendix A). The Specific Plan Area, for which a general Section 404 Permit application (USACE ID# 2007-02159) has been filed, is comprised of several development projects for which specific Section 404 Permit applications have been submitted, or will be submitted, to the Corps. The development projects (Projects) are currently designated in Appendix B to this FAPA. As applicants are added or removed from the Specific Plan, the table in Appendix B will be modified, without having to amend the FAPA, and signatories to this PA shall be notified in writing accordingly, and new additions shall be offered an opportunity to be Concurring parties on this PA.
B. The Specific Plan's APE includes all areas where effects could occur from construction of the Projects listed in Appendix B. Future project design changes may require redefining the APE and the development projects within it. Each Section 404 Permit application shall have its own Project-specific APE designated by the Corps and approved by SHPO. If some of the Projects are merged or segregated, a Project will be defined as the area to which a specific Section 404 Permit application applies. The Corps shall consult with SHPO in a timely manner to amend the boundaries of the APE. Amendment of the APE, by agreement of the signatories, shall not require amendment of this FAPA. Project-specific APEs shall not extend beyond the Section 404 permit area as designated by the Corps.

C. Because each Project will require an individual Section 404 permit application and the Projects will be independent of one another, the Corps has determined that the resolution of adverse effects to Historic Properties that span more than one individual 404 permit application must be completed before the Corps makes a decision on any affected Section 404 permit applications. Therefore, the Corps will ensure that adverse effects are resolved prior to the issuance of separate Section 404 permits for each Applicant.

D. Using the previous research conducted on historic districts to date, and where said previous research is deemed adequate by the Corps, the evaluation of significance, a portion of the resolution of adverse effect (the archival research and documentation), and the development of a Work Plan for the remaining identification and evaluation shall be carried out in advance of any Section 404 permit approval. The work will be conducted at a level (determined adequate by the Corps and SHPO) that will allow the remaining resolution of adverse effects to be carried out on a Project-specific basis by individual applicants independently of one another.

E. The Preliminary Historic Properties Synthesis (HPS) resulting from this work shall include the following components:

1. National Register evaluation of significance for the Rhodes' Diggings Mining District;
2. restatement of the previous Determination of Eligibility of the Alder Creek Corridor Mining District, and a review of other districts previously documented within the Specific Plan Area APE;
3. historic context statement for the Specific Plan Area, based on research conducted to date, supplemented with additional research, if necessary;
4. delineation of the boundaries of historic districts, sites, and features based on research conducted to-date, supplemented with additional research, if necessary;
5. results of previously conducted archival research for the historic mining districts;
6. research design and work plan to guide development of property-specific HPTPs; and
7. Professional standards and guidelines for all work carried out under the FAPA.

This Preliminary HPS will not include any analysis relative to the larger "paper districts" known as the Folsom Mining District and American River Placer Mining District.

F. This Preliminary HPS shall also serve as a mitigation document for the Specific Plan Area (see Stipulation 6).

G. At its discretion, or when required by Stipulation 5, the Corps shall consult with SHPO and/or the ACHP pursuant to 36 CFR Part 800 for any individual action covered by this FAPA.

Stipulation 3
Review of Preliminary Historic Properties Synthesis

A. The Corps shall ensure that the draft Preliminary HPS is submitted to the SHPO for review and comment. SHPO shall have 30 calendar days after receipt of the draft Preliminary HPS to comment to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and incorporated into the final HPS.

B. The Corps, in recognizing the unique legal and political relationship between the United States and with Indian tribal governments, shall also afford the Native Americans an opportunity to review the draft Preliminary HPS in accordance with Stipulation 9. The Corps shall also make a reasonable and good-faith effort to afford other
concurring parties (such as applicants or historical societies) an opportunity to review the draft Preliminary HPS. Concurring parties shall have 30 calendar days after receipt of the draft Preliminary HPS to comment to the Corps. The Corps shall consider comments received during this time period and incorporate such comments into the draft Preliminary HPS to the extent practicable; however, the Corps is not required to revise the Preliminary HPS in response to any comments received.

C. The Corps shall make every effort to resolve disputes that may arise from conflicting comments by SHPO, or concurring parties via telephone conversations or other informal means of communication. In the event that disputes are not easily remedied, the Corps shall resolve them in accordance with Stipulation 14. Failure by SHPO or any of the concurring parties to comment within the 30 calendar day time period shall not preclude the Corps from allowing the Preliminary HPS to be finalized.

D. If the Preliminary HPS is revised in response to comments, the Corps shall provide the revised Preliminary HPS to SHPO and the concurring parties for review. SHPO and the concurring parties shall provide any comments on the revised Preliminary HPS to the Corps within 30 calendar days. If no comments are provided within 30 calendar days, the Corps may proceed.

E. Once the signatories determine that the Preliminary HPS is adequate, the Corps shall authorize the Applicant(s) to proceed with the Work Plan contained within the Preliminary HPS before issuing any Section 404 Permits. Within 30 days of approving the final Preliminary HPS, the Corps shall provide a copy of the final document to SHPO and the concurring parties.

Stipulation 4
Revision of the Preliminary HPS

In conjunction with the execution of this FAPA, the Corps shall ensure that the Preliminary HPS (previously prepared under the original PA) and in accordance with Stipulations 2 and 3 is revised and renamed “Historic Property Management Plan (HPMP)” (Appendix C). The revision shall include the addition of a section on the framework and guidelines for addressing: 1) the remaining identification and evaluations of historic properties under this FAPA; 2) subsequent and related consultation and review processes; and 3) preparation of the determinations of effect and HPTPs. These additions were as previously agreed upon as part of the originally executed PA. The HPMP will also accommodate future attachments that include property-specific HPTPs and resulting technical studies. Revisions to the Preliminary HPS (HPMP) shall not require a modification or amendment to this FAPA.

Stipulation 5
Development and Review of Project-Specific Historic Property Treatment Plans

A. The Corps shall apply the Criteria of Adverse Effect pursuant to 36 CFR 800.5(a) (1) to all Historic Properties within the APE that will be affected by the Project. Findings of effect (FoE) shall be made in consultation with the SHPO, affected Native American Tribes and other interested parties, subject to Stipulation 6D. Separate FoE shall be produced for each development project listed in Attachment B.

B. The Corps shall submit the FoE to the SHPO, affected Native American Tribes, and other interested parties for review and comment, subject to Stipulation 6D. SHPO shall have 30 calendar days after receipt of the FoE to provide comments to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and incorporated into the final FoE. If SHPO fails to respond within 30 days, the Corps may proceed.

C. As directed by the HPMP, the Corps shall develop a property-specific HPTP for each individual APE, which provides the site-by-site actions required to resolve adverse effects to individual Historic Properties. The HPTPs shall be appended to the HPMP.

D. The Corps shall submit each HPTP to the SHPO, affected Native American Tribes, and other interested parties, subject to Stipulation 6D, for review and comment. SHPO shall have 30 calendar days after receipt of the HPTP to provide comments to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and incorporated into the final HPTP. If SHPO fails to respond within 30 days, the Corps may proceed.
E. If the HPTPs are revised as a result of comments, the Corps shall afford the SHPO and appropriate concurring parties 30 calendar days to review and comment on the revised documents. If no comments are received within 30 calendar days, The Corps may finalize the HPTP.

F. Once the Signatories determine that an HPTP is adequate, the Corps shall issue authorization to proceed with the implementation of the HPTP. Project-specific Memoranda of Agreement are not required.

G. If a specific development project includes a portion of an eligible historic district, the SHPO will not approve the HPTP for that development project until all HPTPs of other development projects containing a portion of said district have been approved unless Stipulation 2 has been satisfied.

H. The Corps shall ensure that any comments received during this time period are taken into account and, where feasible, incorporated into the final documents. The Corps shall make every effort to resolve disputes that may arise from conflicting comments by the signatories or concurring parties via telephone conversations or other informal means of communication. In the event that disputes are not easily remedied, the Corps shall resolve them in accordance with Stipulation 14.

I. Final drafts of the HPTPs will be provided to SHPO, the ACHP, affected Native American tribes, and other interested parties, subject to Stipulation 6D.

### Stipulation 6

#### Technical Reports and Historic Properties Management Plan

A. The results of the implementation of the HPTPs shall be documented in a comprehensive confidential technical report(s) that follow the guidelines of the Secretary of the Interior and the California Office of Historic Preservation.

B. As Project-specific surveys, evaluation, and data recovery studies are carried out for individual Projects, results that pertain to the historical period will be incorporated into the cultural context in the HPMP with technical reports attached as appendices in sequence. Studies that focus solely on resources from the prehistoric period will be reported separately, via project-specific technical reports. Information generated during the early planning process and as presented in the HPMP will be modified as more data are generated during mitigation. The HPMP will be a dynamic document which may require revisions throughout the course of the build-out of the Specific Plan. Revisions to the HPMP will not require amending the FAPA.

C. The Corps shall ensure that the revised HPMP is submitted to the SHPO and appropriate concurring parties for review and comment, subject to Stipulation 6D. Reviewers shall have 30 calendar days after receipt of the draft reports to provide comment to the Corps. Review by Native American tribes or individuals shall be in accordance with Stipulation 9. The SHPO will have five additional days to consider the comments of other parties to the consultation and review. The Corps shall ensure that any comments received during this time period are taken into account and, where feasible, incorporated into the final reports.

D. Dissemination of technical documentation shall not conflict with Section 304 of the National Historic Preservation Act, with respect to confidentiality of data.

### Stipulation 7

#### Annual Reporting

USACE shall prepare and circulate among the signatory and concurring parties to this Agreement an Annual Report documenting the activities carried out pursuant to this Agreement. USACE shall submit the Annual Report to the Agreement signatory and concurring parties within forty-five (45) days of the anniversary of this Agreement's execution. The Annual Report is to present a summary of actions taken under the Agreement, all findings and determinations, accomplishments, public objections, and inadvertent effects. The Agreement signatory and concurring parties will review the Annual Report to determine the effectiveness of the Agreement as an alternative to the standard Section 106 consultation procedures under 36 CFR Part 800. Annual reporting will be in effect until the PA has been terminated.

First Amended Programmatic Agreement

Folsom Specific Plan Project September 30, 2013
Stipulation 8
Permissions to Proceed With Construction

A. The Applicants shall be allowed to proceed with construction following compliance with all other pertinent requirements of the permit conditions and under any of the following terms.

1. the Corps and SHPO have determined that there are no cultural resources within the APE for a particular construction segment; and

2. the Corps and SHPO have determined that there are no Historic Properties within the APE for a particular construction segment; or

3. the Corps, after consultation with the SHPO and interested persons, has implemented an adequate HPTP for the construction segment, and
   (a) the fieldwork phase of the HPTP has been completed; and
   (b) the Corps has accepted a summary of the fieldwork performed and a reporting schedule for that work.

B. If any development project includes a portion of a National Register-eligible district that will be adversely affected, then construction will not proceed until Stipulation 2 has been satisfied.

Stipulation 9
Project-Specific Public and Native American Involvement

A. In consultation with potentially interested Native American tribes, the Corps will identify Historic Properties of traditional religious and cultural importance.

B. The Corps shall seek comments from all potentially interested Native American tribes in light of the guidance provided in National Register Bulletin 38 in making determinations of eligibility for any Traditional Cultural Properties as these are defined in Bulletin 38. Those Native American tribes or individuals need not be concurring parties to this FAPA. All reviewers shall have not less than 30 calendar days after receipt to provide comments to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and, where feasible, incorporated into the final survey and evaluation reports.

C. Pursuant to 36 CFR 800.6(c)(2)-(3), the Corps shall consider requests by others to become concurring parties to this FAPA.

D. The interested public, in addition to Native American tribes, will be invited to provide input on the identification, evaluation, and proposed treatment of Historic Properties. Depending on the specific nature of the Undertaking, this will be done through letters of notification, public meetings, and site visits.

E. The Corps The Corps, in recognizing the unique legal and political relationship between the United States and with Indian tribal governments, shall afford the Native Americans an opportunity to participate in the development and implementation of the terms of this FAPA, including inventory reports, evaluation plans and reports, and during the resolution of adverse effect for those resources within each APE that are either exclusively or partially affiliated with prehistoric or ethnographic resources. Reviewers shall respond in a timely manner and no later than 30 calendar days from the receipt of the document. Failure by any reviewer to comment within this time period shall not preclude the Corps from proceeding or allowing draft reports to be finalized. The Corps shall ensure that all Native American reviewers shall expeditiously receive copies of all final survey and evaluation reports.
Stipulation 10
Modifications and Additions to Off-Site Infrastructure

Upon the addition or modification of the Specific Plan Area or related "off-site" infrastructure elements, the Corps and SHPO shall consult on the need to modify the APE for the Specific Plan Area. If the elements are found to be part of the APE and not under a separate Undertaking, then they shall be subject to the provisions of this FAPA. If off-site infrastructure elements are found not to be part of the APE, then the additions will be subject to 36 CFR Part 800.

Stipulation 11
Discovery of Unanticipated Historic Properties

If potentially National Register-eligible resources are discovered or inadvertently affected during construction, ground disturbing activities will cease until the provisions of 36 CFR 800.13(a) are met. The Corps will submit written notification describing the circumstances of the discovery to the SHPO within two working days (e.g., letter or email notification). The Corps will provide the SHPO, the ACHP, affected Native American Tribes, and interested parties an opportunity to review and comment on proposed treatment. The SHPO has two working days to respond by facsimile machine, telephone, and/or email following initial contact by the Corps.

Stipulation 12
Curation

The Corps will ensure that all cultural materials and associated records resulting from identification, evaluation, and treatment efforts conducted under this FAPA shall be properly maintained until analyses specified in the HPTP are complete. Should the Applicants agree to curate the cultural materials and associated records after all analysis is completed, they shall be curated in conformance with 36 CFR 79.

Stipulation 13
Treatment of Human Remains and Associated Objects

The Corps will ensure that Native American human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the Undertaking are treated in accordance with the requirements of Section 7050.5 of the California State Health and Safety Code, Section 5097.98 of the California Public Resources Code, and Assembly Bill 2641.

Stipulation 14
Dispute Resolution

A. Should the SHPO object within 30 calendar days to plans provided for review pursuant to this FAPA or to actions proposed or carried out pursuant to this FAPA, the Corps and SHPO shall consult for 30 calendar days to resolve the objection. If the objection is resolved within this time frame, the parties shall proceed in accordance with the terms of that resolution. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the ACHP in accordance with procedures specified in 36 CFR 800.7. Within 30 calendar days following receipt of any ACHP comments, the Corps shall make a final decision regarding resolution of the objection and in writing notify the SHPO and the ACHP of that decision. The objection shall thereupon be resolved. In reaching a final decision regarding the objection, the Corps shall take into account any comments received from the SHPO and the ACHP pursuant to this stipulation.

B. The Corps’ responsibility to carry out all actions required by this FAPA that are not the subject of the dispute shall remain unchanged.
Stipulation 15
Amendments, Noncompliance, and Termination

A. If any signatory believes that the terms of this FAPA cannot be carried out or are not being met, or that an amendment to its terms should be made, that signatory will immediately consult with the other Signatory to consider and develop amendments to this FAPA pursuant to 36 CFR 800.6(c)(7). The amendment process culminates in the issuance of an amended PA, which replaces the previous FAPA on its effective date. Amendments to the FAPA will only become effective upon approval of all the Signatories.

B. If this FAPA is not amended as provided for in this stipulation, any Signatory may terminate it. The party proposing termination of the FAPA will provide the other Signatory and concurring parties with an explanation in writing of the reasons for proposing termination in accordance with 800.6(c)(8). Within seven calendar days following receipt of such notification, the parties shall consult for up to 45 days to seek alternatives to termination. Should such consultation result in agreement on an alternative to termination, the parties shall proceed in accordance with the terms of that agreement. Concurring parties may not terminate or amend this FAPA.

C. In the event of termination of this FAPA, the Corps shall comply with the provisions of 36 CFR Part 800 for all Undertakings covered by this FAPA.

Stipulation 16
Duration of the FAPA

A. If any Project has not been authorized under Section 404 of the Clean Water Act within ten (10) years following execution of this FAPA by the signatory parties, this FAPA shall automatically terminate and have no further force or effect. In such event, the Corps shall notify the other FAPA 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. If the FAPA should be terminated because the Undertaking no longer meets the definition of an “Undertaking” set forth in 36 CFR 800.16(y), Stipulation 15c shall apply.

B. This FAPA will be in effect through the Corps’ implementation of the Undertakings, and will terminate and have no further force or effect when the Corps, in consultation with SHPO, determines that the terms of this FAPA have been fulfilled in a satisfactory manner and/or Corps involvement in the project has ended. The Corps will provide the other SHPO and concurring parties with written notice of its determination and of termination of this FAPA.

C. The Corps shall be responsible for monitoring the work being performed under this FAPA, including ensuring that all mitigation documentation is incorporated into the HPMP, as amended. The Corps is responsible for initiating consultations with SHPO in advance of expiration of this FAPA, in accordance with Stipulation 15, above.

D. If the FAPA has not been, or is not expected to be, fully implemented within ten (10) years of the anniversary date of the execution of this FAPA, and if the FAPA has not been terminated, then the signatories shall initiate consultation no less than 365 days prior to the expiration of this FAPA to reconsider its terms. Reconsideration may include a continuation (extension) of the FAPA as originally executed, amendment, or termination.

Stipulation 17
Effective Date

This FAPA shall take effect on the date that it has been fully executed by the Corps and the SHPO.

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

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By: Michael S. Jewell
Name: Michael S. Jewell
Title: Chief, Regulatory Division

Date: 2 Oct 2013

CALIFORNIA OFFICE OF HISTORIC PRESERVATION

By: Carol Roland-Nawi, PhD
Name: Carol Roland-Nawi, PhD
Title: State Historic Preservation Officer

Date: 3 Oct 2013
CONCURRING PARTIES:

FOLSOM SOUTH AREA GROUP
By: [Signature]
Name: Jim Ray
Title: Authorized Representative
Date: 9/30/13

CITY OF FOLSOM
By: [Signature]
Name: DAVID E. MILLER
Title: [Public Works] CAP. DEV.
Date: 10/1/13

FOLSOM HISTORICAL SOCIETY
By: [Signature]
Name: Patrick Maxfield
Title: President

SHINGLE SPRINGS BAND OF MIWOK INDIANS
By: [Signature]
Name: ———
Title: ———
Date: ———

UNITED AUBURN INDIAN COMMUNITY
By: [Signature]
Name: Gene Whitehorse
Title: CHAIRMAN
Date: 10/6/13

WILTON RANCHERIA
By: [Signature]
Name: ———
Title: ———
Date: ———
Appendix A

Area of Potential Effects
FIGURE 1. Project Site and Vicinity

Buffalo Creek, Clarksville, Folsom, and Folsom SE, California, 7.5 minute topographic quadrangle, US Geological Survey, 1980.

Scale in Feet
North 0 3000

unsec., T.9N., R.7E., and §15-22, T.9N., R.8E., MDBM
Latitude 38° 37' 30" N
Longitude 121° 07' 30" W
Watersheds:
- Lower American (18020111)
- Lower Cosumnes-Lower Mokelumne (18040005)
- Upper Cosumnes (18040013)
Appendix B

<table>
<thead>
<tr>
<th>Development Projects (effective September 2013)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Folsom Heights</td>
</tr>
<tr>
<td>Mangini Ranch</td>
</tr>
<tr>
<td>Mangini Trust</td>
</tr>
<tr>
<td>Arcadian Heights</td>
</tr>
<tr>
<td>Russell Promontory</td>
</tr>
<tr>
<td>Folsom 138</td>
</tr>
<tr>
<td>Carpenter Ranch</td>
</tr>
<tr>
<td>Hillsborough (Folsom 560)</td>
</tr>
<tr>
<td>Prairie City Road Business Park</td>
</tr>
<tr>
<td>Javanifard and Zhargami</td>
</tr>
<tr>
<td>Sacramento Country Day School</td>
</tr>
<tr>
<td>Backbone Infrastructure</td>
</tr>
</tbody>
</table>
Figure 2. Folsom Plan Area Components
2005-429 Folsom Plan Area Specific Plan
Appendix C

Preliminary Historic Properties Synthesis / Historic Property Management Plan

Enclosed on CD

CONFIDENTIAL
NOT FOR PUBLIC RELEASE