

# Appendix G: Memorandum of Agreement

**MEMORANDUM OF AGREEMENT AMONG  
THE BUREAU OF RECLAMATION, MID-PACIFIC REGION;  
THE UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT,  
THE CITY OF OAKLEY;  
THE CONTRA COSTA WATER DISTRICT;  
ACD-TI OAKLEY, LLC BY TI CAPITAL MANAGEMENT, A DELAWARE LLC;  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE RESOLUTION OF ADVERSE EFFECTS TO THE  
EAST CYPRESS PRESERVE DEVELOPMENT PROJECT,  
CONTRA COSTA COUNTY, CALIFORNIA**

**Whereas**, the Bureau of Reclamation (Reclamation) has established that the inclusion of the multiple parcels into the Contra Costa Water District (CCWD) service area (Reclamation's Undertaking) in Oakley, California (Attachment 1), requires Reclamation's approval and compliance with Title 54 U.S.C. § 306108, formerly and commonly known as Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, and its implementing regulations found at 36 CFR § 800, as this action constitutes an undertaking with the potential to affect historic properties, as defined in 36 CFR § 800.3(a); and

**Whereas**, Reclamation provides water to CCWD through the Central Valley Project (CVP) and CCWD distributes the water to customers within their service area; and

**Whereas**, the East Cypress Preserve Development Project (Project) will affect waters of the United States, and will require a permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) from the United States Army Corps of Engineers, Sacramento District (USACE) (USACE's Undertaking); and

**Whereas**, the USACE has designated Reclamation as the Lead Federal Agency for the Undertaking under Section 106, and will be a Signatory to this Memorandum of Agreement (MOA); and

**Whereas**, Reclamation, in consultation with the USACE and the California State Historic Preservation Officer (SHPO) and in accordance with 36 CFR § 800.4(a)(1), has established the Area of Potential Effect (APE), which includes both Reclamation's and the USACE's Undertakings, as defined at 36 CFR § 800.16(d), as the parcels proposed for inclusion into the Contra Costa Water District (CCWD) service area, and

**Whereas**, the City of Oakley is the lead California public agency for the California Environmental Quality Act (CEQA) and due to the substantial Project responsibilities as defined in this MOA, Reclamation has invited the City of Oakley to sign this MOA as an Invited Signatory Party; and

**Whereas**, Reclamation has consulted with the Wilton Rancheria, the Yocha Dehe Wintun Nation, the Indian Canyon Mutsun Band of Costanoan Indians, the Muwekma Ohlone Indian

Tribe of the San Francisco Bay Area, the Amah Mutsun Tribal Band and the Ohlone Costanoan Esselen Nation; and

**Whereas**, Mr. Andrew Galvin, of the Ohlone Indian Tribe, and Ms. Ann Marie Sayers, of the Indian Canyon Mutsun Band of Costanoan Indians, have identified historic properties of religious and cultural significance and human remains within the APE and Reclamation has invited Mr. Galvin and Ms. Sayers to be Concurring Parties to this MOA; and

**Whereas**, Reclamation has consulted with the State Historic Preservation Officer (SHPO) and notified the Advisory Council on Historic Preservation (ACHP) of the adverse effects in accordance with 36 CFR § 800 and the ACHP has chosen not to participate in the consultation by letter on May 25, 2017, pursuant to 36 CFR § 800.6(a) (1) (iii); and

**Whereas**, CCWD, as the wholesale water provider for the Project, has applied to Reclamation to approve the inclusion of the East Cypress Development into their service area, and Reclamation has invited CCWD to sign this MOA as an Invited Signatory; and

**Whereas**, ACD-TI Oakley, LLC, a Delaware limited liability company (Developer), has options to purchase the Project site from its five current land owners (Bethel Island LLC, a Nevada Limited Liability Company, David Dal Porto, Melinda K. Leshner, Stephen Leshner and Robert K. Taylor, Trustees of the Margaret L. Leshner QTIP Trust, KT KB Oakley, LLC, a California LLC, and Pacific West Communities Inc.). The Developer is the applicant for the USACE's permit and has requested that CCWD obtain CVP inclusion from Reclamation. The Developer is responsible for providing all requested documentation for the inclusion and USACE permit and Reclamation has invited the Developer to sign this MOA as an Invited Signatory; and

**Whereas**, a cultural resources investigation for the Undertaking has identified multiple sites within the APE that are eligible for listing in the National Register of Historic Places (National Register) or will be treated as eligible for the purposes of Reclamation's and the USACE's Undertaking. National Register eligible sites include CA-CCO-128 (Dal Porto Mound), CA-CCO-129/138 (Hotchkiss mound), CA-CCO-368 (Leshner Mound), CA-CCO-767 (Biggs Mound), and the Contra Costa Canal and the sites that will be treated as eligible for the National Register include CA-CCO-134, CA-CCO-768/H (Dal Porto North Site 1), and CA-CCO-845 (East Cypress Site).

**Whereas**, there is consensus between Reclamation and SHPO that CA-CCO-129/138 (Hotchkiss mound) is eligible for the National Register under Criterion A and D; and

**Whereas**, historic properties were identified in the indirect APE; however, Reclamation, in consultation with the USACE, and the SHPO agreed that there will be no indirect effects to these historic properties (SHPO letter dated January 27, 2017); and

**Whereas**, Reclamation, in consultation with the SHPO and in accordance with 36 CFR § 800.4(b)(2), has elected to defer evaluation and finding of effect determination of site CA-CCO-845 (East Cypress Site), and treat it as eligible for the National Register, for purposes of the Undertaking only.; and

**Whereas**, Reclamation, in consultation with the SHPO and the USACE, have considered alternatives to Reclamation's and the USACE Undertakings and has chosen to proceed with the Undertaking, and has determined to resolve adverse effects of Reclamation's and the USACE Undertaking through the execution and implementation of this MOA; and

**Now, therefore**, Reclamation, the USACE, CCWD, City of Oakley, Developer, and the SHPO agree that the Undertaking will be implemented in accordance with the following Stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these Stipulations will govern the Undertaking and all of its parts.

## **STIPULATIONS**

Reclamation will be responsible for ensuring compliance with the stipulations of this MOA. This MOA will also be a condition of the USACE's proposed Clean Water Act Section 404 permit and will ensure that the following measures are carried out by the City of Oakley to the satisfaction of the USACE:

### **I. DEFINITIONS**

- A. The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this MOA.
- B. The Project is the East Cypress Preserve Development Project, which includes all areas to be developed, managed or protected, including all access, staging, construction, and mitigation areas within a proposed new service area boundary for CCWD, as depicted in Attachment 1 of this MOA. In general, the Project calls for the development of a 1,246-acre site that will include construction of infrastructure such as streets, water lines, sewer lines, regional sewer lift station, regional water tanks and associated pumping facilities, landscaped areas, storm water detention basins and storm water pumps. The Project will also include construction of a bridge over Rock Slough.

### **II. ROLES AND RESPONSIBILITIES**

- A. Reclamation
  - 1. As Lead Federal Agency, Reclamation will be responsible for ensuring compliance with the terms of this MOA, providing oversight of this MOA, coordinating the roles of other consulting parties, participating in the resolution of objections among the consulting parties, and providing technical assistance and guidance as needed to the other consulting parties to this MOA. Reclamation may choose to conduct phased consultation for National Register evaluation and resolution of adverse effects for CA-CCO-845 (East Cypress Site) and CA-CCO-129/138 (Hotchkiss Mound). Reclamation is a Signatory to this MOA.
  - 2. Reclamation will assume primary management and responsibility for implementing the stipulations of this MOA. Reclamation responsibilities as they relate to this MOA

will conclude, with SHPO and the USACE consensus, when the terms of the resolution of Adverse Effects as defined in the Attachment 2, Historic Properties Treatment Plan (HPTP) have been fulfilled. Reclamation will notify all Signatories when the adverse effects have been resolved.

3. Reclamation, in consultation with the SHPO, will be responsible for reviewing and commenting on actions necessary to comply with the terms of this MOA including:
  - a. Evaluations of cultural resources for inclusion in the National Register, and consultation with the SHPO regarding eligibility determinations;
  - b. Finding of effects on historic properties;
  - c. Implementation of measures to avoid, minimize, or resolve potential adverse effects on historic properties.
4. Reclamation will continue to consult with Tribes and other interested parties until the resolution of adverse effects has been finalized.

#### B. USACE

1. Upon submission of any documents for review, the USACE has a review role until adverse effects have been resolved, as detailed in the HPTP (Attachment 2). The USACE will have thirty (30) days from the date of receipt of the documentation to review and provide comments to Reclamation, unless otherwise specified in this MOA. Should the USCAE not respond to any such submission within the thirty (30)-day period, Reclamation may proceed to the next step in the MOA. The signatories may extend the timeframe through mutual agreement. USACE is a Signatory to this MOA.

#### C. SHPO

1. Upon submission of any documents for review, the SHPO will have thirty (30) days from the date of receipt of the documentation to review and provide comments to Reclamation, unless otherwise specified in this MOA. Should the SHPO not respond to any such submission within the 30-day period, Reclamation may proceed to the next step in the MOA. The signatories may extend the timeframe through mutual agreement. The SHPO is a Signatory to this MOA.

#### D. City of Oakley

1. Once the resolution of adverse effects has been finalized, as the CEQA lead, the City of Oakley will take ownership of all deed restricted historic properties and will be responsible for implementation of the Cultural Resource Management Plan (Attachment 3; CRMP) on deeded land, in consultation with the SHPO, Indian tribes, as specified in the CRMP (Attachment 3; CRMP). As CEQA lead, the City of Oakley will also be responsible for all state requirements as applicable. The City of Oakley is an Invited Signatory to this MOA.

**E. Developer**

1. The Developer will be required to provide information and documentation necessary for Reclamation to comply with the terms for implementing this MOA and the HPTP (Attachment 2). With the exception of human remains and associated grave offerings, the Developer will be responsible for any costs associated with the curation of any artifacts or other materials (dietary remains, soil samples, etc.), at a federally approved facility (letter of intent on file with Reclamation) and shall be managed in accordance with standards identified in 411 DM 3, 36 CFR Part 79, and LND 02-02. Human remains and their associated artifacts will be treated in accordance with policies developed by the Most Likely Descendant (MLD) in consultation with Reclamation, the SHPO, and the Developer further pursuant to PRC Section 15064.5(e) as detailed in the HPTP and CRMP. Notwithstanding any provision of this MOA to the contrary, the Developer shall have no obligations under this MOA with respect to any of the legal parcels that comprise the Project site unless and until the Developer exercises its option to purchase any such parcel and, in the event of such purchase, the Developer's obligations hereunder shall only extend to such purchased parcel. No additional testing will be completed on a parcel until the Developer has purchased the parcel. The Developer is an invited Signatory to this MOA.

**F. Contra Costa Water District (CCWD)**

1. CCWD is the applicant to Reclamation for the inclusion of the Project into their service area. CCWD is an invited Signatory to this MOA.

**G. Mr. Andrew Galvin, Ohlone Indian Tribe**

1. Mr. Galvin has been formally appointed by the Native American Heritage Commission as the project MLD for the purposes of consultation on the respectful treatment and disposition of human remains identified during resolution of adverse effects. Mr. Galvin is invited to participate in this MOA as a Concurring Party.

**H. Ms. Ann Marie Sayers, Indian Canyon Mutsun Band of Costanoan**

1. Ms. Sayers is a Native American Interested Party participating as a consulting party in the Section 106 process, during resolution of adverse effects. Ms. Sayers will have 30 days from the date of receipt of documentation to review and provide comments to Reclamation, unless otherwise specified in this MOA. Should Ms. Sayers not respond to any such submission within the 30-day period, Reclamation may assume that she has no objections. Ms. Sayers is invited to participate in this MOA as a Concurring Party. If Ms. Sayers does not sign as a Concurring Party, she will have no further responsibilities under this MOA. Reclamation will work to address any future concerns raised by Ms. Sayers.

**III. AREA OF POTENTIAL EFFECTS (APE)**

- A. Reclamation, in consultation with the SHPO, has defined the Undertaking's APE (Attachment 1). Reclamation may amend the APE as needed, or as requested by a

Signatory or Invited Signatory, without amending the MOA proper. Any APE modifications will be submitted to the SHPO and the USACE for review and comment. The SHPO and the USACE will comment on APE modifications within fourteen (14) days of receipt. Should the SHPO not respond to an APE modification submission within fourteen (14) days of receipt, Reclamation may move forward with the modified APE. If amended, all consulting parties will receive formal notification of the amended APE.

#### **IV. HISTORIC PROPERTIES TREATMENT PLAN FOR THE EAST CYPRESS PRESERVE DEVELOPMENT PROJECT (ATTACHMENT 2; HPTP)**

This section addresses the resolution of adverse effects for the East Cypress Site (CA-CCO-845) and e Hotchkiss Mound (CA-CCO-129/138), which include data recovery and deed restrictions. Reclamation applied the criteria of adverse effect to the historic properties within the APE and determined that many of the historic properties will either be successfully avoided or have minimal effects, but due to the nature of the potential and unavoidable construction activities though the Hotchkiss Mound (CA-CCO-129/138) and the East Cypress site (CA-CCO-845) the undertaking will result in unavoidable adverse effects. Attachment 2 (HPTP) identifies the methods to be used to fulfill the Stipulations for resolution of adverse effects.

- A. Evaluation and Phased Section 106 Review, Alternative Procedures for the East Cypress Site (CA-CCO-845). Although testing of the East Cypress Site suggested a potential for the discovery of new information on inter-site variability in the region, the results from initial testing was not sufficient to definitively evaluate the integrity of the deposits, therefore, in consensus with SHPO (January 27, 2017), this site was treated as eligible for the National Register, for purposes of the Undertaking.
  1. Reclamation will phase Section 106 review and compliance for East Cypress Site (CA-CCO-845) as allowed for under 36 CFR 800.4(b)(2), 36 CFR 800.8(c)(1)(ii), and 36 CFR 800.14(b).
  2. Reclamation will apply National Register criteria, and determine whether CA-CCO-845 is a historic property eligible for the National Register, as discussed in Attachment 2 (HPTP), and consult with SHPO per 800.4(c)(2).
  3. If the site is determined eligible for the National Register by Reclamation, the resolution of adverse effects will involve data recovery excavations as described in Attachment 2 (HPTP).
  4. All Signatories will be afforded the opportunity to review and comment on the results of the historic properties determinations and resolution of any adverse effects made by Reclamation, pursuant to 36 CFR § 800.4.
- B. Resolution of adverse effects at the Hotchkiss Mound (CA-CCO-129/138), Data Recovery and Deed Transfers

1. Reclamation, in consensus with SHPO (January 27, 2017), has determined the undertaking will result in adverse effects to a portion of CA-CCO-129/138 (historic property).
  - a. As detailed in the Attachment 2 (*Historic Properties Treatment Plan for the East Cypress Preserve Development Project, Eastern Contra Costa, California*), Reclamation will partially resolve the adverse effects to CA-CCO-129/138 through data recovery excavation.
  - b. As detailed in Measure A6 of Attachment 3 (CRMP), the Developer will also partially resolve the adverse effects to CA-CCO-129/138 by means of a deed transfer for a portion of CA-CCO-129/138 that is currently under private ownership to the Archaeological Conservancy, an official national 501(c)(3) non-profit organization, in the form of a no cost donation.
  - c. As detailed in Measure A6 of Attachment 3 (CRMP), land transferred by the Developer to the Archaeological Conservancy would not be developed into park areas or capped. The Developer may decide to remove structures not eligible for the National Register following the guidelines described in Attachment 3 (CRMP) under Measures A.2, A.3.a, A.3.b, and A.3.c.

#### **V. CULTURAL RESOURCES MANAGEMENT PLAN FOR THE EAST CYPRESS PRESERVE DEVELOPMENT PROJECT (ATTACHEMENT 3)**

In order to address future potential impacts from development, a CRMP will be implemented by the City of Oakley for all deeded property under their ownership. The CRMP (Attachment 3; CRMP) is developed for considering and managing potential effects on historic properties caused by activities associated with constructing, operating, and maintaining a project. It establishes a decision-making process for considering potential effects on historic properties, addressing both the long-term preservation of historic values, and the immediate effects of a development project over its entire term.

- A. As detailed in Attachment 3, three mitigation measures will be implemented to avoid, minimize, and mitigate adverse effect to historic properties. Measure A is avoidance and Preservation, Measure B is Mitigative Excavation and Data collection, and Measure C is a process for Unanticipated Discoveries. Resource Specific Treatments are detailed in Attachment 3 (CRMP); Section 4 (Resource Specific Treatments).
- B. The long term ownership, development, and management of all historic properties in the APE (deeded land) will be the responsibility of the City of Oakley, as described in Attachment 3 (CRMP), Section 1. The City of Oakley will take ownership of all deed restricted historic properties. The final subdivision map, as well as the individual parcel survey plats for each cultural resource area, will contain a statement regarding the deed restrictions for each resource (Attachment 3; CRMP: A.4 Deed Restrictions, page 38), and deed restrictions will be individually filed for each preserved archaeological parcel.



## **VI. POST REVIEW DISCOVERIES**

- A. In the event of a post review discovery during the fulfillment of the resolution of adverse effect (Attachment 2; HPTP), Reclamation will determine if ongoing construction activities will affect a previously unidentified property that may be eligible for the National Register, or affect a known historic property in an unanticipated manner, and address the discovery or unanticipated effect in accordance with 36 CFR § 800.13(b). Reclamation at its discretion may, in accordance with 36 CFR § 800.13(c), assume any discovered property to be eligible for inclusion in the National Register for the purposes of implementing this MOA, per Attachment 3(CRMP [Measure B. C.2]).

## **VII. REPORTING REQUIREMENTS AND RELATED REVIEWS**

- A. Each year following the execution of this MOA until it expires or is terminated, the Applicant shall provide all parties of this MOA a summary report no later than December 31<sup>st</sup> each year detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes, any problems encountered, and any disputes and objections received in the Applicant's efforts to carry out the terms of this MOA.
- B. The Annual Report will contain a summary of actions taken under the MOA, all findings and determinations to date, accomplishments, objections, and unanticipated discoveries.
- C. All Signatories, Invited Signatories, and Concurring Parties will review the Annual Report and provide any comments within thirty (30) calendar days of receipt to Reclamation. If no comments are received within the review period, Reclamation may assume there are no comment(s) on the Annual Report and accept the findings.
- D. Any Signatory, Invited Signatory, or Concurring Party may request in writing to meet with Reclamation to discuss the contents of the Annual Report and such meeting shall be scheduled within 30 days of such request.
- E. Reclamation's Annual reporting requirements will remain in effect until Reclamation, USACE, and SHPO have consensus that the resolution of adverse effects as described in the Attachment 2 (HPTP) have been fulfilled.

## **VIII. PROFESSIONAL QUALIFICATIONS STANDARDS**

- A. All actions prescribed by this MOA that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition for historic properties, or that involve reporting or documentation of such actions in the form of reports, forms, or other records, will be carried out by or under the direct supervision of a person or persons who meet at a minimum the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-44739; Appendix A to 36 CFR 61) in the appropriate discipline.

## **IX. ADMINISTRATIVE STIPULATIONS**

### **A. Amendments**

1. Any Signatory to this MOA may request, in writing, to the other Signatories that it be amended, whereupon the Signatories will consult for a period of no more than 30 days to consider such amendment. The effective date of the amendment is the date of written concurrence with the proposed amendment by all Signatory Parties to the MOA. If the Signatory Parties cannot agree to the appropriate terms to amend the MOA, the MOA may be terminated, as outlined below in Stipulation IX. C., or remain in place unchanged.
2. The APE, CRMP, and HPTP may be amended to address necessary changes to the Project and/or the treatment of historic properties affected by the Undertaking without amendment to this MOA.

### **B. Deliverables**

1. Deliverables will include a data recovery technical report and other public benefit contributions.
  - a. The data recovery technical report will include all aspects of the archaeological inventory, evaluation, and data recovery work will be documented in a single technical Data Recovery report that includes a full accounting of methods and results, a discussion of Native American and agency consultation, and recommendations for any further treatment that may be necessary. The report will include maps, photos, site records, analysis files, artifact catalogues, and other relevant materials generated during the study, while considering the MLD recommendations. More detail is provided within Attachment 2 (HPTP).
  - b. The public benefit contributions will include non-technical deliverables which will be prepared in a format suitable for presenting information from the research and data recovery at CCO-845 and CCO-129/138 to the public. These will not present any precise location information for any cultural resources near the property. The content will be dependent on the volume and type of information generated during data recovery. More detail is provided within Attachment 2 (HPTP).

### **B. Dispute Resolution**

1. Should any Signatory, Invited Signatory, or Concurring Party object in writing to Reclamation regarding the manner in which the terms of this MOA are carried out, to any action carried out or proposed with respect to implementation of this MOA, or to any document prepared in accordance with and subject to the terms of this MOA,

Reclamation will immediately notify the other Signatories, Invited Signatories and Concurring Parties of the objection, request their comments on the objection within thirty (30) days following receipt of Reclamation's notification, and proceed to consult with the objecting party for no more than thirty (30) days to resolve the objection. Reclamation will honor the request of the other parties to this MOA to participate in the consultation and will take any comments provided by those parties into account.

2. If the objection is resolved through consultation, Reclamation may proceed in accordance with the terms of such resolution and will request an amendment to this MOA, in accordance with Stipulation IX. A., if necessary to implement the resolution.
3. If after initiating such consultation, Reclamation determines that the objection cannot be resolved through consultation, Reclamation will forward all documentation relevant to the objection to the ACHP, Signatories, Invited Signatories, and Concurring Parties, including Reclamation's proposed response to the objection, with the expectation that the ACHP will, within forty-five (45) days after receipt of all pertinent documentation, exercise one of the following options:
  - a. Advise Reclamation that the ACHP concurs with Reclamation's proposed response to the objection, whereupon Reclamation will respond to the objection accordingly; or,
  - b. Provide Reclamation with recommendations, which Reclamation will take into account in reaching a final decision regarding its response to the objection; or,
  - c. Notify Reclamation of the objection and comment pursuant to 36 CFR § 800.7(c), and proceed to refer the objection and comment. Reclamation will take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4).
4. Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, Reclamation may proceed with implementation of Reclamation's response as presented.
5. Reclamation will take into account any ACHP recommendation or comment, and any comments from the other parties to this MOA, in reaching a final decision regarding the objection. Reclamation's responsibility to carry out all actions under this MOA that are not the subject of the objection will remain unchanged.
6. Reclamation will provide all other Signatories and Concurring Parties to this MOA and the ACHP with a written copy of its final decision regarding an objection addressed pursuant to this Stipulation.

7. Reclamation may authorize any action subject to objection under items 1-6 of this Stipulation to proceed provided the objection has been resolved in accordance with the terms of aforesaid items 1-6, as determined by Reclamation.
8. At any time during implementation of the terms of this MOA, should any member of the public raise an objection in writing pertaining to such implementation to any Signatory to this MOA, that Signatory will immediately notify Reclamation. Reclamation will notify the other Signatories in writing within fifteen (15) days of receipt of their notification. Reclamation will consider the objection, and in reaching its decision, Reclamation will take all comments into account. Within fifteen (15) days following closure of the comment period, Reclamation will render a decision regarding the objection and respond to the objecting party. Reclamation will promptly notify the Signatories of its decision in writing, including a copy of the response to the objecting party. Reclamation's decision regarding resolution of the objection will be final. Following issuance of its final decision, Reclamation may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

#### C. Termination

1. Only a Signatory or Invited Signatory may propose termination of this MOA. If this MOA is not amended as provided for in Stipulation IX.A, or an Invited Signatory or Signatory proposes termination of this MOA for other reasons, the party proposing termination will, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and consult with the other parties to this MOA for at least thirty (30) calendar days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, then the parties will proceed in accordance with the terms of that agreement as stipulated under IX. A. (Amendment) of this MOA. Such consultation will not be required if Reclamation proposes termination because the Undertaking no longer meets the definition set forth at 36 CFR § 800.16(y).
2. Should such consultation fail, the party proposing termination may terminate this MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder will render this MOA without further force or effect.
3. If this MOA is terminated hereunder, and if Reclamation and/or the USACE determines that their Undertakings will nonetheless proceed, Reclamation or the USACE will either (1) execute a new MOA pursuant to 36 CFR § 800.6(c)(1) or (2) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7(a). Reclamation will notify the Signatories and Invited Signatories and Concurring Parties as to the course of action it will pursue.

#### D. Duration

1. This MOA will be in effect following execution by the Signatories and Invited

Signatories. This MOA will remain in effect until all the terms of this MOA have been satisfactorily fulfilled or for five (5) years after execution, whichever comes first. The resolution of adverse effect, with SHPO and USACE consensus, will conclude Section 106 and terminate this MOA. The terms and conditions of the CRMP will remain in effect indefinitely.

2. If the Undertaking has not been authorized under Section 404 of the Clean Water Act within five (5) years following execution of this MOA by the Signatories and Invited Signatories, this MOA will automatically terminate and have no further force or effect. In such event, Reclamation will notify the other parties in writing and, if it chooses to continue with the Undertaking, will reinitiate review of the Undertaking in accordance with Section 106 of the NHPA (54 U.S.C. § 306108) and all applicable regulations.
3. If Reclamation determines that the requirements of the MOA cannot be met in five (5) years, the Signatories, Invited Signatory, and Concurring Parties will consult to reconsider its terms and/or a continuation. Reconsideration may include the continuation of the MOA as originally executed, amendment of the MOA, or termination. In the event of termination, Reclamation will comply with Stipulation IX.D(2), if it determines that the Undertaking will proceed notwithstanding termination of this MOA.

#### E. Confidentiality

1. All Signatories, Invited Signatories, and Concurring Parties to this MOA will ensure that shared data, including data concerning the precise location and nature of archaeological historic properties and properties of religious and cultural significance, are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the NHPA, as amended (54 U.S.C. § 307103), and implementing regulations under 36 CFR § 800.6(a)(5) and 36 CFR § 800.11(c); Section 9 of the Archaeological Resources Protection Act (10 U.S.C. §§ 470aa – 470mm); Freedom of Information Act (FOIA); Executive Order on Sacred Sites 13007 FR 61-104 dated May 24, 1996; and California Government Code Section 6250-6270, as applicable.

#### X. AUTHORIZING SIGNATURES

- A. In witness hereof, the following authorized representatives of the parties have signed their names on the dates indicated, thereby executing this MOA. Reclamation will distribute copies of the MOA with original signatures to all parties of the MOA when it is fully executed.
- B. **EXECUTION** of this MOA by Reclamation and the SHPO and implementation of its terms evidence that Reclamation has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

Memorandum of Agreement  
East Cypress Preserve Development Project  
Contra Costa County

**SIGNATORY PARTY:**

BUREAU OF RECLAMATION


Name: David Murillo  
David Murillo, Regional Director  
Mid-Pacific Region

Date: 17 May 2018

Memorandum of Agreement  
East Cypress Preserve Development Project  
Contra Costa County



**SIGNATORY PARTY:**

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

Name:  \_\_\_\_\_ Date: 25 April 2018  
Michael S. Jewell  
Chief, Regulatory Division

**SIGNATORY PARTY:**

**CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

Name:  Date: 6/22/18  
 Julianne Polanco  
California State Historic Preservation Officer



**INVITED SIGNATORY PARTY:**

THE CITY OF OAKLEY

Name: Bryan H. Montgomery Date: 4/27/18  
Bryan H. Montgomery  
City Manager, City of Oakley

Memorandum of Agreement  
East Cypress Preserve Development Project  
Contra Costa County

**INVITED SIGNATORY PARTY:**

CONTRA COSTA WATER DISTRICT

Name:  Date: 5/17/18  
Fran Garland  
Manager of Watershed and Environmental Planning

**INVITED SIGNATORY PARTY:**

Name:  Date: Apr. 20, 2018

Ziad Ghandour  
ACD-TI Oakley, LLC a Delaware limited liability company By: TI Capital Management,  
LLC a Delaware limited liability company By: Ziad Ghandour, its sole member  
(Developer)

**CONCURRING PARTY:**

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Andrew Galvin  
Ohlone Indian Tribe

**CONCURRING PARTY:**

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Ann Marie Sayers  
Indian Canyon Mutsun Band of Costanoan

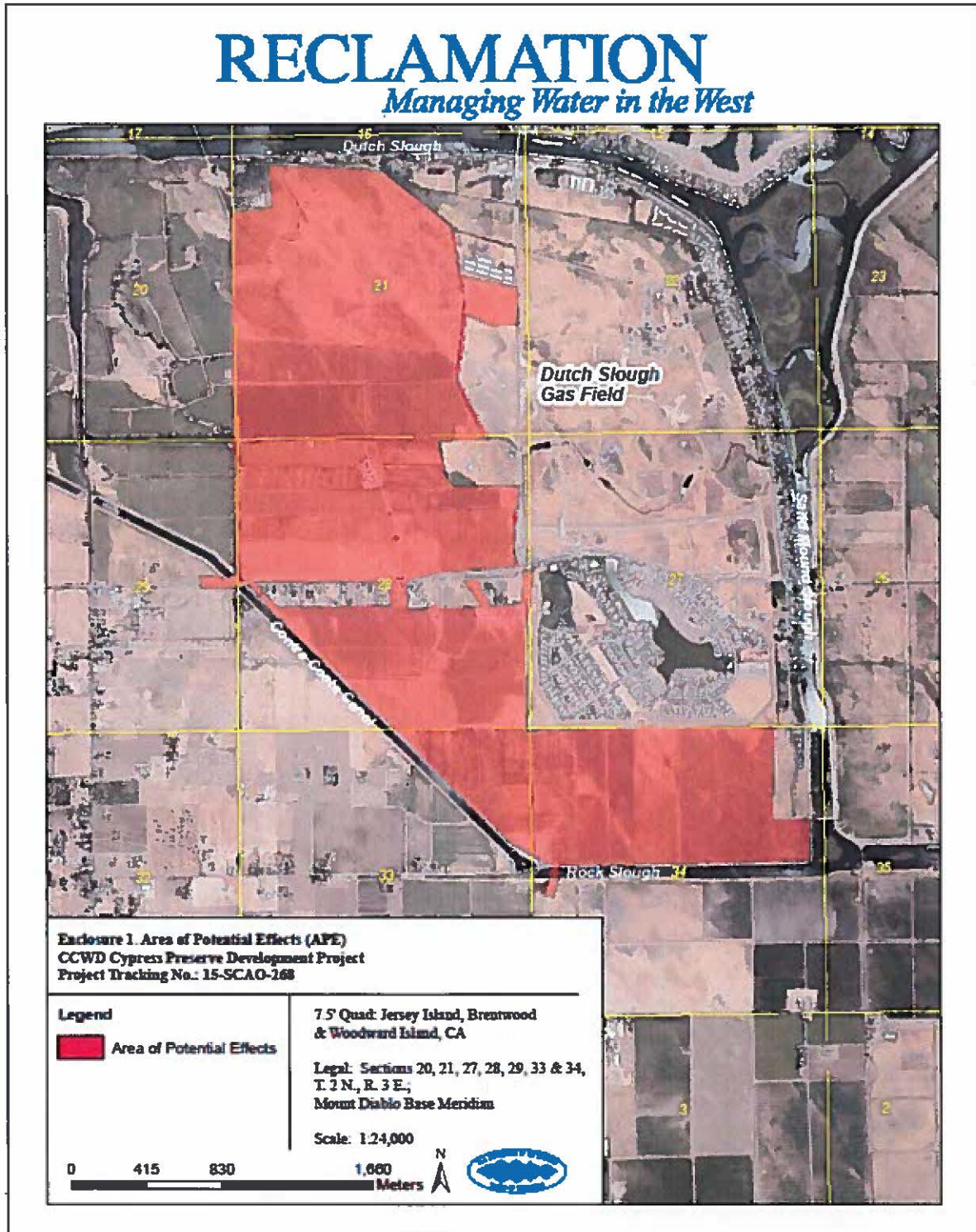
**Attachment List**

Attachment 1: APE Map

Attachment 2: *Historic Properties Treatment Plan for the East Cypress Preserve Development Project, Eastern Contra Costa, Calif*

Attachment 3: *Cultural Resource Management Plan for the East Cypress Preserve Development Project, Eastern Contra Costa, California*

ATTACHMENT I  
Direct Area of Potential Effects



ATTACHMENT 2  
*Historic Properties Treatment Plan for the East Cypress Preserve Development Project,  
Eastern Contra Costa, California*



**ATTACHMENT 3**  
*Cultural Resource Management Plan for the East Cypress Preserve Development Project,  
Eastern Contra Costa, California*