

**PROGRAMMATIC AGREEMENT
BETWEEN
CALIFORNIA AREA OFFICE - INDIAN HEALTH SERVICE,
AND THE
CALIFORNIA OFFICE OF HISTORIC PRESERVATION,
REGARDING OPERATIONS
FOR THE
SANITATION FACILITIES CONSTRUCTION PROGRAM
FOR
SCATTERED INDIAN HOMES THROUGHOUT CALIFORNIA**

WHEREAS, the California Area Office (CAO), including its District and field offices pursuant to the provisions of Section 7(a) of Public Law 86-121 (42 U.S.C. §2004), provides financial assistance for scattered Indian homes through the Indian Health Service Sanitation Facilities Construction Program (hereinafter “Program”); and,

WHEREAS, Public Law 86-121 authorizes the IHS to construct, improve, and extend essential sanitation facilities including domestic and community water supplies and facilities, and drainage facilities and sewage and waste disposal facilities together with necessary appurtenances and fixtures for Indian homes, communities and lands; and,

WHEREAS, the provision of Federal financial assistance is defined as an undertaking at 36 CFR Part 800.16(y) in support of applicant’s request for such services and activities performed under this Program subject to Section 106 of the National Historic Preservation Act (NHPA), as amended and its implementing regulations codified at 36 C.F.R. Part 800; and,

WHEREAS, historic properties as defined at 36 C.F.R. Part 800.16(l)(1) means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria; and,

WHEREAS, the Program provides onsite water and sanitation facilities at new, like-new and/or existing Native American residences located throughout California. Construction activity may include the installation of onsite wells, spring catchment systems, creek intake structures, septic systems, and service line piping to connect to existing community water and sewer systems; and,

WHEREAS, CAO has determined that various construction activities under the Program have the limited potential to cause effects to historic properties eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the California State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. §800.14(b)(2); and,

WHEREAS, CAO has invited California federally recognized American Indian Tribes to review and comment on this Programmatic Agreement (PA) in recognition of the unique government to

government relationship between the Federal government and federally recognized American Indian Tribes those Tribes are invited to participate as consulting parties; and,

WHEREAS, the IHS has consulted with its Tribal Advisory Committee on January 8 and May 27, 2026, and with all elected California Tribal Leaders on March 4, March 12, and May 29, 2026, and California Tribal Leaders voted 18 in favor and 0 opposed to this proposed Programmatic Agreement; and

WHEREAS, Tribal Historic Preservation Officers (THPO) have Section 106 consultation authority where an Indian Tribe has assumed Section 106 responsibilities of the SHPO on Tribal lands pursuant to Section 101(d)(2)(D)(iii) of the Act, this PA is not applicable to IHS undertakings in support of those projects located within the exterior boundaries of Tribal lands that are subject to the purview of a THPO.

WHEREAS, CAO has notified the Advisory Council on Historic Preservation (ACHP) of its desire to satisfy its Section 106 responsibilities for undertakings that may affect CAO in a programmatic manner, and invited the Council's participation in the development of this PA in accordance with 36 C.F.R. §800.14(b)(2); and,

WHEREAS, this PA does not include IHS Community projects that serve multiple homes; and,

NOW THEREFORE, the CAO and SHPO agree that the CAO undertakings subject to the Sanitation Facilities Construction Program in the State of California shall be administered in accordance with the following stipulations to satisfy its Section 106 responsibilities.

STIPULATIONS

The CAO will ensure the following measures are carried out:

I. APPLICABILITY

A. This PA outlines procedures that will substitute for the Section 106 process outlined in the Advisory Council on Historic Preservation's (ACHP) regulations for all projects carried out under the Sanitation Facilities Construction (SFC) Program at scattered Indian homes in California. This PA applies to undertakings where projects at scattered Indian homes in California occur under the jurisdiction of the CAO, including undertakings performed by CAO Contractors.

B. This PA will identify routine and minor CAO projects at scattered Indian homes in California that would have "no effect" or "no adverse effect" to historic properties and would not require standard review under 36 C.F.R. §§800.3 through 800.6 with the California Office of Historic Preservation (hereinafter SHPO). Most projects at scattered Indian homes are limited in scope but with substantial health and safety concerns.

C. All projects that are **not** identified in Appendix A must be fully reviewed in accordance with 36 CFR Part 800.

II. TRIBAL CONSULTATION

A. In accordance with Section 101(d)(6)(B) of the NHPA, the CAO will consult with Indian Tribe leadership and/or designated tribal official to determine if there are properties of religious and cultural significance within the Area of Potential Effect (APE) for an undertaking.

B. This PA will provide a protocol for addressing inadvertent or unanticipated discoveries of archaeological resources including those of religious and cultural significance to Indian Tribes.

C. For those Tribes that do not have a THPO, the CAO will consult directly with those Tribes in place of the SHPO for projects on scattered Indian homes that fall completely on Tribal trust lands.

D. For those scattered Indian homes located on Tribal trust lands and/or Reservations and Rancherias, CAO will consult directly with the THPO if the Tribe has one or directly with Tribal Leadership in place of the SHPO.

III. PROGRAM ACTIVITIES AND INDIVIDUAL PROJECTS EXEMPT FROM SHPO REVIEW

A. The CAO or its District Offices will identify the Area of Potential Effect (APE) for each individual scattered Indian home project.

B. The CAO or its District Offices will request a records search from the appropriate Information Center of the California Historical Resources File System (CHRIS) to identify historic properties that may be in the APE for each scattered Indian home.

C. The CAO will request a Sacred Land file review from the Native American Heritage Commission (NAHC) to further identify historic properties that may be in the APE.

D. Because the CHRIS records search and the NAHC files may not document every historic property or cultural resource within the Area of Potential Effect (APE), the CAO will also consult directly with the Tribe – and with the THPO where applicable – to verify that no historic properties are present.

E. If the CHRIS, the NAHC and the Tribe all determine that no historic properties are present or affected in the APE, the CAO may determine that no historic properties are present or affected in the APE, document the findings, and proceed with the undertaking without review by the SHPO.

F. The CAO has reviewed its current activities identified in Appendix A that would result in no historic properties present or affected that will not be reviewed by the SHPO pursuant to Section 106. The CAO will report on such activities to the SHPO under the procedures outlined in Section VIII.

IV. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. If the undertaking is not exempt from review pursuant to Appendix A or CAO determines that historic properties in the APE may be present or affected, CAO will request a NAHC file review, consult with the affected Tribe and consult with the SHPO.

B. For those projects not identified in Appendix A, and as soon as CAO is aware of a proposed project, CAO will initiate consultation with the SHPO, Tribe and/or THPO, then make a finding of effect based on the historic property review and/or field survey, then seek the SHPO's, Tribe's and/or THPO's concurrence with the Area of Potential Effect (APE) and finding of effect. If the SHPO or Tribe does not object to the finding within thirty (30) days, the undertaking may proceed without further review.

V. INADVERTENT DISCOVERY OF ARCHAEOLOGICAL RESOURCES

A. Upon the inadvertent discovery of a potential archaeological resource following review of an undertaking pursuant to this PA, activities in the immediate vicinity that could harm the resource will cease, the site secured, and the project will enter review pursuant to 36 C.F.R. §800.13, Post-Review Discoveries.

B. Within 24 hours of the discovery, CAO will notify the Tribe of the discovery as well as the THPO for those Tribes that have one and the SHPO. If parties cannot be reached over the weekend, the CAO will contact THPO and Tribe on the next business day.

C. After a discovery, a qualified professional archaeologist will assess the resource for National Register of Historic Places (NRHP) eligibility and consult with the CAO, THPO, SHPO and Tribe, as applicable, to determine if the resource is a historic property as defined at 36 C.F.R. §800.16(l)(1).

D. If the discovery is a historic property, as defined above, the CAO will in cooperation with the THPO and/or SHPO and the Tribe to determine actions to resolve adverse effects within 48 hours of discovery.

E. If the THPO and/or Tribe determines during consultation that the discovery is significant by the Tribe's criteria, CAO will mitigate as determined by the appropriate THPO and/or Tribe. If the discovery is deemed not significant by the appropriate THPO and/or Tribe and is not considered a historic property, no additional actions will be required, and the activity will be allowed to proceed.

VI. HUMAN REMAINS

A. It is the policy of CAO to avoid disturbance of human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as defined by the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. §3001). The CAO will follow the tenets of NAGPRA outlined below:

- When Native American remains found on Federal or Tribal lands are released by the County Sheriff/Coroner, CAO will follow NAGPRA regulations set forth in 43 C.F.R. §10.4 (a) through (e).
- CAO will contact the Native American Heritage Commission (NAHC) for identification of the Most Likely Descendent (MLD).
- If human remains are inadvertently found on fee land and the property owner had no knowledge of their identity, the CAO will follow general NAGPRA guidelines and initiate or continue consultation with the THPO and/or Tribe. In addition, the CAO will consult with the SHPO, determine if the discovery is a historic property and resolve any adverse effects.
- Any repatriation of remains will be made to the Tribe/MLD in any treatment plan.
- If the remains are not the subject of a criminal investigation, the disposition of the remains will be determined in consultation with the Tribe and the SHPO and be subject to state burial laws.

VII. COLLECTION AND CURATION

A. Artifacts, faunal materials, and/or samples collected in conjunction with recovery actions under this PA are the property of the landowner or legal entity with jurisdiction and as such will remain with the identified individual or legal entity.

VIII. REPORTING

- A. The Annual Report will include the following:
- Any problems encountered in fulfilling the terms of the PA and any suggestions for amendments to the PA.
 - A summary of Appendix A exempt activities that occurred during the reporting period. The exempt activity will describe the activity and its location, and its start and finish date.
 - Updates to points of contact will be included, as needed.

IX. ANTICIPATORY DEMOLITION

A. The CAO agrees that it will not provide assistance to an applicant for IHS assistance for water and sanitation facilities who, with the intent to avoid the requirements of this PA or the National Historic Preservation Act, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant, adverse effect to occur. The CAO may, after consultation with the ACHP, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the Applicant.

X. MONITORING

A. The THPO and/or Tribe and SHPO may monitor any activities carried out pursuant to this PA. The CAO will cooperate with the THPO, Tribe, and SHPO in carrying out these monitoring requirements.

XI. DURATION

A. This PA will become effective on the date of the initial submission to ACHP and will remain in effect for a period of five (5) years unless extended pursuant to Section XI B, below, or terminated in accordance with Section XIII.

B. As needed, the signatories will review this PA five years after this PA becomes effective and every five (5) years thereafter and amend the document as necessary, upon agreement of the signatories. The PA may be extended for an additional ten (10) years (with an additional five (5) year review), subject to agreement of all signatories.

C. All timelines in this Section can be modified at the mutual agreement of all signatories.

XII. AMENDMENT

A. If any party to this PA determines that it cannot fulfill its obligations under this PA and believes an amendment is necessary, that party will immediately request the consulting parties to consider an amendment to this PA pursuant to 36 C.F.R. §800.14. Such an amendment will be executed in the same manner as the original document. A PA amendment requires the concurrence of all signatory parties to this PA.

XIII. TERMINATION

A. Any party to the PA may terminate the agreement by providing thirty (30) days written notice to all other parties, provided that the parties will consult prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, all proposed undertakings will be reviewed by CAO under the consultation process set forth under Subpart B of 36 C.F.R. Part 800.

XIV. DISPUTE RESOLUTION

A. Should any signatory object to this PA at any time to any actions proposed or the way the terms of the PA are implemented, the CAO will consult with such party to resolve the objection. If the CAO determines that such objection cannot be resolved the CAO will:

- Forward all documentation relevant to the dispute, including the CAO's proposed resolution to the ACHP. The ACHP will provide the CAO with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute,

CAO will prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, signatories, and any concurring parties, and provide them with a copy of this written response. CAO will then proceed according to its final decision.

- If the ACHP does not provide its advice regarding the dispute within thirty (30) days, the CAO may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the CAO will prepare a written response that considers any timely comments regarding the dispute from the signatories to the PA and provide them and the ACHP with a copy of such written responses.
- The CAO's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XV. GENERAL PROVISIONS

A. This PA is neither a fiscal nor a funds obligating document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties of this PA will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This PA does not provide such authority.

B. Nothing herein will be construed to obligate the CAO to expend or involve the United States of America in any contract or other obligation for the future payment of money more than the appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.

C. This PA does not alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of a California Indian Tribe. This PA also does not alter the existing government-to-government relationship between the Federal government and a California Indian Tribe.

EXECUTION AND IMPLEMENTATION of this PA demonstrates that the CAO has satisfied its Section 106 responsibilities for all individual undertakings of the CAO's management of resources in its implementation of the Program at scattered Indian homes in California.

SIGNATORIES:

CALIFORNIA AREA OFFICE – INDIAN HEALTH SERVICE

By: _____
Beverly Miller, M.H.A., M.B.A.
Director
Indian Health Service – California Area Office

Date

CALIFORNIA OFFICE OF HISTORIC PRESERVATION

By: _____
Julianne Polanco
State Historic Preservation Officer
California Office of Historic Preservation

Date

The Advisory Council may participate. IHS will add once they respond.

APPENDIX A
LIST OF ACTIVITIES EXCLUDED FROM SHPO REVIEW

A. GENERAL ACTIVITIES

- Financial Assistance for buildings, structures or objects aged 50 years or less
- Financial Assistance that does not result in a change of land use
- Contracts, grants, and cooperative agreements and continuations, supplements, extensions and amendments of these documents for IHS activities that are categorically excluded under the National Environmental Policy Act (NEPA)
- Technical assistance
- Environmental surveillance activities (e.g. sample collection, analysis and monitoring of water and wastewater) to determine necessary corrective action
- Engineering investigations including soil boring and test well drilling to gather data for the purpose of determining engineering feasibility and to permit facility design that does not involve substantial earth moving

B. WATER AND SANITATION SYSTEMS

- Installation of new water and sewer systems including septic tanks and drainfields in previously disturbed areas at the individual's parcel
- Modifications to existing water and septic systems where the APE has been previously disturbed by construction
- Modifications to existing storage tanks and/or pump houses (structures) provided there is no substantial earth moving (valve repairs, small water main/electrical wire installation (about 20 ft) within 15 ft of the existing structure
- Work inside of a building where no work is being conducted on the exterior that involves substantial ground disturbance
- Work done within the confines or shoulder of an existing road
- Modifications to existing water, sewer systems and drainfields where work will occur in or directly adjacent to the existing utility trench and provided there is no substantial earth moving
- Installation of emergency generators provided there is no substantial earth moving

- Small asset replacement for pumphouse controls, pump repairs, well monitoring, gate valves
- Installation or repair of fences provide there is no substantial earth moving
- Connection of new or existing homes to existing community water and sewer systems
- Replacement of existing failed septic and drainfield systems
- Water intake systems and related appurtenances
- Repair or replacement of drainfield/leach field in previously disturbed areas within the APE
- Removal or replacement of pipelines, cables or electrical conduit within disturbed areas of the APE
- Replacement pumps and other ancillary equipment on existing systems
- Installation of new or replacement water wells and related appurtenances located in disturbed areas of the APE or that does not involve substantial earth moving