

# MEMORANDUM OF AGREEMENT

AMONG

DEPARTMENT OF HOMELAND SECURITY'S  
FEDERAL EMERGENCY MANAGEMENT AGENCY,  
U.S. ARMY CORPS OF ENGINEERS,  
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
YOCHA DEHE WINTUN NATION,  
CALIFORNIA EMERGENCY MANAGEMENT AGENCY,  
AND THE CITY OF VACAVILLE

REGARDING

THE CONSTRUCTION OF ALAMO CREEK DETENTION BASIN,  
VACAVILLE, SOLANO COUNTY, CALIFORNIA

**WHEREAS**, the Department of Homeland Security's Federal Emergency Management Agency (FEMA), pursuant to Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (42 U.S.C. § 5172) and implementing regulations in 44 CFR Part 206, proposes to provide financial assistance pursuant to the Hazard Mitigation Grant Program (HMGP) to the City of Vacaville (City) in Solano County, California, through the California Emergency Management Agency (Cal EMA), for the construction of the Alamo Creek Detention Basin (FEMA's Undertaking) on City-owned property to protect life and property in the City during future flooding events; and

**WHEREAS**, the City's proposal will affect waters of the United States and, in compliance with Section 404 of the Clean Water Act of 1977 (33 U.S.C. § 1344), will require a permit from the U.S. Army Corps of Engineers (USACE), Sacramento District (USACE's Undertaking); and

**WHEREAS**, FEMA has determined in consultation with the California State Historic Preservation Officer (SHPO), that the Area of Potential Effect (APE) for direct effects from FEMA's Undertaking consists of the entire 77-acre parcel of City-owned property, including all areas of ground disturbance and construction staging and access routes; and

**WHEREAS**, the APE for FEMA's Undertaking includes the APE for USACE's Undertaking, which by jurisdiction may be more restrictive; and

**WHEREAS**, FEMA has identified two archaeological sites within the APE for FEMA's Undertaking (CA-SOL-468 and CA-SOL-469) that FEMA, in consultation with the SHPO, has determined to be eligible for listing in the National Register of Historic Places (National Register) under Criterion D for their ability to yield information important in prehistory and therefore qualify as "historic properties," as defined in 36 CFR §§ 800.16(1)(1);

**WHEREAS**, resource descriptions and locations are detailed in *Archaeological Survey and Geoarchaeological Testing Report for the Alamo Creek Detention Basin, Solano County*,

*California* (2009)<sup>1</sup> and summarized in *Cultural Resources Treatment Plan for the Proposed Alamo Creek Detention Basin, Vacaville, Solano County, California*<sup>2</sup> (see **Attachment 1**); and

**WHEREAS**, in accordance with Section 106 of the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. § 470f) and its implementing regulations in 36 CFR Part 800 and Stipulation VIII.A of the 2005 First Amended Programmatic Agreement (Agreement), FEMA, in consultation with the SHPO, has determined that the City's proposal is likely to have an adverse effect on CA-SOL-468 and CA-SOL-469, the two archaeological sites determined eligible for inclusion in the National Register and USACE has concurred with this determination; and

**WHEREAS**, in accordance with 36 CFR § 800.6(c) and Stipulation VIII of the Agreement, FEMA has determined that a Memorandum of Agreement (MOA) is the appropriate vehicle to stipulate measures to resolve adverse effects of FEMA's Undertaking on historic properties; and

**WHEREAS**, this MOA addresses all phases of construction of the City's proposal within the duration of this MOA (see Stipulation V of this MOA) but not post-construction operation or maintenance; and

**WHEREAS**, on January 29, 2010, in accordance with 36 CFR §§ 800.6(a)(1) and Stipulation VIII.A of the Agreement, FEMA notified the Advisory Council on Historic Preservation (ACHP) of FEMA's adverse effect determination and provided the documentation specified in 36 CFR § 800.11(e) that the City's proposal does not meet the criteria for ACHP participation listed in 36 CFR §§ 800.6(a)(1)(i)(A), (B), and (C); and

**WHEREAS**, on March 11, 2010, the ACHP declined to participate in the preparation of this MOA and to be a signatory to this MOA; and

**WHEREAS**, on February 4, 2010, FEMA invited the USACE to participate in the preparation of this MOA and to be a signatory to this MOA to allow the USACE to meet its responsibilities under Section 106 of the NHPA and 36 CFR Part 800, and all applicable regulations concurrently with FEMA; and

**WHEREAS**, on April 15, 2010, the USACE agreed to participate in this MOA pursuant to 36 CFR §§ 800.2(c)(5) and to allow FEMA to serve as the Lead Federal Agency for the City's proposal; and

**WHEREAS**, on January 28, 2010, FEMA notified by letter potentially interested Indian Tribes who were identified by the California Native American Heritage Commission of FEMA's determinations related to the City's proposal and the intent to prepare this MOA; and

---

<sup>1</sup> Adrian Whitaker, *Archaeological Survey and Geoarchaeological Testing Report for the Alamo Creek Detention Basin, Solano County, California*, 2009. Prepared for the City of Vacaville, California: Far Western Anthropological Research Group.

<sup>2</sup> Adrian Whitaker, *Cultural Resources Treatment Plan for the Proposed Alamo Creek Detention Basin, Vacaville, Solano County, California*, 2009. Prepared for the City of Vacaville, California: Far Western Anthropological Research Group.

**WHEREAS**, on February 18, 2010, FEMA received a response from the Yocha Dehe Wintun Nation that it wished to participate in this MOA; and

**WHEREAS**, on May 12, 2010, FEMA received a response from the Cortina Band of Wintun Indians, in which the Cortina Band of Wintun Indians declined to participate in this MOA and deferred to the Yocha Dehe Wintun Nation; and

**WHEREAS**, on May 27, 2010, having received no communication from any other potentially interested Indian Tribes, FEMA initiated government-to-government consultation with the Yocha Dehe Wintun Nation pursuant to 36 CFR §§ 800.2(c)(ii) and invited the nation to sign this MOA as an invited signatory; and

**WHEREAS**, this MOA imposes administrative and financial responsibilities on Cal EMA and the City, and FEMA has invited them to participate in the preparation of this MOA and to sign this MOA as an invited signatory; and

**NOW, THEREFORE**, FEMA, USACE, the SHPO, the Yocha Dehe Wintun Nation, Cal EMA and the City agree that the City's proposal, FEMA's Undertaking, and USACE's Undertaking will be implemented in accordance with the following stipulations in order to take into account the effects on historic properties and to satisfy FEMA's and USACE's responsibilities under Section 106 of the NHPA and all applicable regulations.

#### **STIPULATIONS**

To the extent of FEMA's legal authority and in coordination with the USACE, the SHPO, the Yocha Dehe Wintun Nation, Cal EMA, and the City, FEMA will ensure that the measures listed in Stipulations I through IX are implemented.

##### **I. RESOLUTION OF ADVERSE EFFECTS**

- A. To resolve adverse effects to CA-SOL-468 and CA-SOL-469 from FEMA's and USACE's Undertaking, prior to construction of the Alamo Creek Detention Basin, the City will hire a consultant meeting the appropriate Secretary of the Interior's Professional Qualifications Standards (PQS) (36 CFR Part 61) to recover archaeological data in accordance with the *Cultural Resources Treatment Plan for the Proposed Alamo Creek Detention Basin, Vacaville, Solano County, California* (Plan),<sup>3</sup> which was prepared by the City's consultant and approved by FEMA, USACE, the SHPO, and the Yocha Dehe Wintun Nation (see **Attachment 1**). The Plan includes a research design and proposed field and laboratory methods using a phased approach to carry out data recovery. Backhoe trenching and hand excavation will be used to obtain a sufficient sample of site deposits to mitigate the destruction of the site and to recover any human remains that may be present. Following excavation, site destruction using heavy equipment will be systematic to avoid affecting additional significant cultural features or additional human remains.

---

<sup>3</sup> Ibid.

- B. Following the archaeological field investigation, an archaeological monitor representing the City and a Yocha Dehe Wintun Nation tribal monitor will monitor all ground-disturbing activities in Holocene soils in the APE for FEMA's Undertaking. The Plan provides for the treatment and disposition of human remains, associated funerary goods, and specific classes of artifacts, if encountered during data recovery, in accordance with the terms negotiated between the City and the Yocha Dehe Wintun Nation.
- C. The detention basin will not be constructed until the City has obtained all applicable Federal and State permits and until FEMA, in consultation with USACE, has issued written authorization to proceed with construction.

## **II. REPORTING REQUIREMENTS AND REVIEW AND COMMENT**

- A. Following completion of the archaeological fieldwork identified in Stipulation I, the City will notify FEMA and the other signatories via electronic mail that the fieldwork is complete. Within 21 calendar days of completion of the archaeological fieldwork, the City will provide FEMA with a brief interim report that includes (1) the scope of the fieldwork, (2) description of the methods, (3) preliminary findings, and (4) any additional recommendations for site management. FEMA will distribute the report to all signatories concurrently for review and comment. The report will signify the completion of all archaeological fieldwork, excluding construction monitoring, which may be ongoing.
- B. The signatories will review the interim report and provide any comments to FEMA within 21 days of receipt of the report. Comments will be submitted both as hard copies via certified mail and electronically via e-mail. FEMA will respond to any comments within 21 days. FEMA, in consultation with USACE, may issue written authorization to proceed with construction at the end of the 21-day period.
- C. Within 12 months of FEMA's determination that all fieldwork required by Stipulation I is complete, the City will prepare a draft technical report documenting the results of the archaeological fieldwork. FEMA will distribute the draft technical report to the signatories concurrently for review and comment. The signatories will be afforded 30 days following receipt of the draft technical report to submit written comments to FEMA. Failure of the signatories to respond within 30 days will not preclude FEMA from authorizing revisions to the draft technical report, as FEMA deems appropriate. FEMA will provide the other signatories with documentation indicating whether and how the draft technical report will incorporate any of the comments. Unless any of the signatories objects to the documentation in writing to FEMA within 30 days following receipt of the documentation, FEMA may modify the draft technical report as it deems appropriate. Thereafter, FEMA may issue the technical report in final form and distribute the report in accordance with the Plan.
- D. FEMA will distribute copies of the final technical report to the other signatories and to the Northwest Information Center of the California Historical Resources Information System, housed at Sonoma State University.

### III. DISCOVERY OF UNKNOWN RESOURCES

- A. As specified in the Plan, following the archaeological fieldwork, heavy equipment will be used to systematically remove soils within the main site deposits. A qualified professional archaeologist and a Yocha Dehe Wintun Nation tribal monitor will work closely with the equipment operator to identify and, if warranted, record any discovered archaeological features or materials. The goal of the data recovery is to obtain a sufficient sample of site deposits to mitigate the impacts from the destruction of the site and to recover all human remains and associated funerary objects if they are present at the site.
- B. To ensure that all human remains are recovered, the City will ensure that a qualified professional archaeological monitor and a Yocha Dehe Wintun Nation tribal monitor will be present during all ground-disturbing activities within the APE for FEMA's Undertaking. If human remains or significant cultural features are encountered during construction, work in the vicinity of the find will be redirected until a qualified archaeologist can determine the significance of the find.
- C. Human remains have not been previously identified at CA-SOL-468 or CA-SOL-469. If human remains are discovered, the City will immediately notify the Solano County Coroner. Pursuant to the California Health and Safety Code (Code), if the Coroner determines that the human remains are, or may be, of Native American origin, the discovery will be treated in accordance with 5097.98 (a-d) of the Code. The City will work closely with the Most Likely Descendant as appointed by the Native American Heritage Commission to implement proper methods of treatment and disposition of the remains and associated items. Unless other provisions are made, the methods negotiated between the City and the Yocha Dehe Wintun Nation and detailed in the Plan will be followed.
- D. If during archaeological fieldwork or construction, it appears that the City's proposal will affect a previously unidentified cultural resource that may be eligible for the National Register or affect a known historic property in an unanticipated manner, the City will notify the signatories as soon as practicable, but no later than 2 working days from the date of the discovery or realization. The City will redirect work away from the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA, in consultation with USACE and in coordination with the invited signatories, has concluded consultation with the SHPO.
- E. Within 2 working days of notification, FEMA, in consultation with USACE and in coordination with invited signatories, will consult with the SHPO and the Yocha Dehe Wintun Nation to develop actions to take into account the effects to the new discoveries of FEMA's and USACE's Undertakings. FEMA, in consultation with the USACE, will notify the SHPO of any time constraints, and, FEMA, in consultation with the USACE, the Yocha Dehe Wintun Nation, and the SHPO will agree on a time frame for the consultation. The Yocha Dehe Wintun Nation, Cal EMA and the City will be invited to participate in this consultation.

- F. Within 5 working days of notification, FEMA, in consultation with the USACE, will provide the SHPO with written recommendations that take into account the effects of FEMA's and USACE's Undertakings. If the SHPO does not object to FEMA's recommendations within the agreed-upon time frame, FEMA, in consultation with the USACE, will require the City to modify the scope of work to implement the recommendations.

#### IV. PROFESSIONAL QUALIFICATIONS AND STANDARDS

- A. The City will ensure that the implementation of the Plan (see **Attachment 1**), pursuant to this MOA, is conducted by or under the direct supervision of a person or persons meeting the appropriate Secretary of the Interior's PQS for Archaeology as determined by FEMA. However, nothing in this stipulation may be interpreted to preclude the use services of persons who do not meet PQS provided they are under the direct supervision of PQS staff.
- B. Written documentation of activities prescribed by this MOA will conform to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (*Federal Register*, September 29, 1983, Vol. 48, No. 190, Part IV, pp. 44716-44740) as well as to applicable standards and guidelines established by the SHPO and the Yocha Dehe Wintun Nation. Copies of all reports will be provided to the Northwest Information Center of the California Historical Resources Information Center as well as to the signatories.
- C. FEMA will ensure that the materials and records resulting from the historic preservation work stipulated by this MOA are treated according to the details provided in the Plan (see **Attachment 1**).
- D. The signatories acknowledge that historic properties covered by this MOA are subject to the provisions of Section 304 of the NHPA and Section 6254.10 of the California Government Code (Public Records Act) relating to the disclosure of archaeological site information, and having so acknowledged, will ensure that all actions and documentation prescribed by this MOA are consistent with said sections.

#### V. ANTICIPATORY ACTIONS

- A. FEMA shall not grant assistance to the City should it, or those acting on its behalf, engage in anticipatory actions with the intent to avoid the requirements of this MOA or any requirements of Section 106 of NHPA, significantly adversely affecting a historic property to which the assistance would relate or, having legal power to prevent it, allow such significant adverse effects to occur.
- B. After consultation with the SHPO and the ACHP, however, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the City and shall complete consultation for FEMA's Undertaking.

## **VI. DURATION**

Unless amended or terminated in accordance with Stipulations VI or VIII, this MOA will remain in effect for 5 years from its effective date, or until FEMA determines, in consultation with the USACE and the other signatories, that the MOA has been satisfactorily fulfilled. FEMA will notify the USACE and the other signatories in writing when FEMA determines that the conditions of the MOA have been fulfilled and that the MOA is, therefore, terminated. The MOA may be extended by amendment, in accordance with Stipulation VI.

## **VII. AMENDMENTS**

One or more signatories may request that this MOA be amended pursuant to 36 CFR §§ 800.6(c)(7). Within 30 calendar days of such a request, FEMA will confer with the other signatories in person, by e-mail, or by telephone to consider the request. Any amendment will become effective on the date a copy of the signed, amended MOA is filed with the ACHP.

## **VIII. DISPUTE RESOLUTION**

- A. If any signatory objects in writing, within the time frames established by the MOA, to the manner in which the terms of the MOA are implemented, or to any documentation prepared in accordance with and subject to the terms of the MOA, FEMA will notify the other signatories in writing, request their comments within 14 calendar days after receipt of the notification, and consult with the objecting signatory for not more than 21 calendar days to resolve the objection. Any or all of the other signatories may participate in the consultation, and FEMA will take any comments provided by the other signatories into account.
- B. If FEMA determines within 21 calendar days that the objection cannot be resolved, FEMA will forward all documentation relevant to the dispute to the ACHP for its assistance in resolving the dispute. Within 30 calendar days of receipt of all pertinent documentation, the ACHP will either:
  - Advise FEMA that it concurs with FEMA's resolution to the dispute, or
  - Provide recommendations that FEMA will take into account in reaching a final decision regarding the dispute, or
  - Notify FEMA that the objection will be referred for comment in accordance with 36 CFR § 800.7(c), and will proceed to do so. FEMA will take into account any ACHP comments pursuant to 36 CFR §§ 800.7(c)(4) with reference to the subject of the dispute.
- C. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The responsibilities of the City to carry out all actions under this MOA that are not the subject of the dispute will remain unchanged.

## **IX. TERMINATION AND NONCOMPLIANCE**

- A. In the event that the terms of the MOA cannot be or are not being carried out, the signatories will consult to seek to amend the MOA. If an agreement cannot be reached on an amendment, the signatory parties may terminate it pursuant to 36 CFR §§ 800.6(c)(8). If this MOA is terminated, FEMA and USACE will comply with 36 CFR Part 800 and all applicable regulations. This MOA may be terminated without further consultation by a subsequent agreement that explicitly terminates or supersedes this MOA.
- B. If any signatory to this MOA determines that its terms will not or cannot be carried out, that signatory will immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII(A). If within 30 days (or another period agreed to by all signatories), an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, and prior to work continuing on the undertaking, FEMA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FEMA will notify the signatories as to the course of action it will pursue.

## **X. EFFECTIVE DATE**

This MOA will become effective upon signature by all signatories. Signing this MOA, filing of the MOA with the ACHP pursuant to 36 CFR §§ 800.6(b)(1)(iv), and implementing its terms are evidence that FEMA and USACE have taken into account the effects of the City's proposal and FEMA's and USACE's Undertakings on historic properties, have afforded the ACHP an opportunity to comment, have satisfied their responsibilities under Section 106 of the NHPA and its implementing regulations, 36 CFR Part 800.

**SIGNATORIES**

**Department of Homeland Security's Federal Emergency Management Agency**

Nancy Ward Date: 6/23/11  
Nancy Ward  
Regional Administrator, Region IX

Alessandro Amaglio Date: 6/23/11  
Alessandro Amaglio  
Environmental Officer, Region IX

**U.S. Army Corps of Engineers, Sacramento District**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Michael S. Jewell  
Chief, Regulatory Division

Milford Wayne Donaldson Date: 24 JUN 2011  
Milford Wayne Donaldson, FAIA  
California State Historic Preservation Officer

**INVITED SIGNATORIES**

**Yocha Dehe Wintun Nation**  
\_\_\_\_\_  
Date: \_\_\_\_\_  
Marshall McKay  
Tribal Chairman, Yocha Dehe Wintun Nation

**California Emergency Management Agency**  
\_\_\_\_\_  
Date: \_\_\_\_\_  
Brendan Murphy  
Governor's Authorized Representative

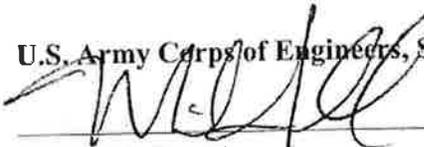
**City of Vacaville**  
Rod Moresco Date: 5/23/11  
Rod Moresco  
Director of Public Works, City of Vacaville

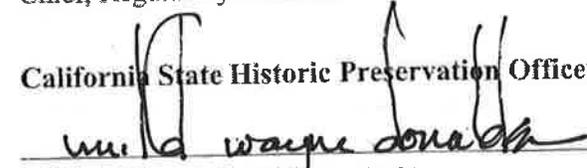
**SIGNATORIES**

**Department of Homeland Security's Federal Emergency Management Agency**

\_\_\_\_\_ Date: \_\_\_\_\_  
Nancy Ward  
Regional Administrator, Region IX

\_\_\_\_\_ Date: \_\_\_\_\_  
Alessandro Amaglio  
Environmental Officer, Region IX

**U.S. Army Corps of Engineers, Sacramento District**  
 \_\_\_\_\_ Date: 26 May 11  
Michael S. Jewell  
Chief, Regulatory Division

**California State Historic Preservation Officer**  
 \_\_\_\_\_ Date: 24 JUN 2011  
Milford Wayne Donaldson, FAIA  
California State Historic Preservation Officer

**INVITED SIGNATORIES**

**Yocha Dehe Wintun Nation**  
\_\_\_\_\_ Date: \_\_\_\_\_  
Marshall McKay  
Tribal Chairman, Yocha Dehe Wintun Nation

**California Emergency Management Agency**  
\_\_\_\_\_ Date: \_\_\_\_\_  
Brendan Murphy  
Governor's Authorized Representative

**City of Vacaville**  
\_\_\_\_\_ Date: \_\_\_\_\_  
Rod Moresco  
Director of Public Works, City of Vacaville

**SIGNATORIES**

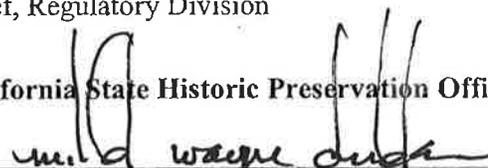
**Department of Homeland Security's Federal Emergency Management Agency**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Nancy Ward  
Regional Administrator, Region IX

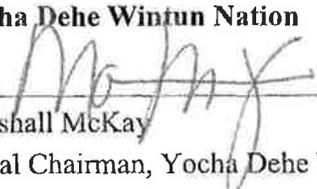
\_\_\_\_\_  
Date: \_\_\_\_\_  
Alessandro Amaglio  
Environmental Officer, Region IX

**U.S. Army Corps of Engineers, Sacramento District**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Michael S. Jewell  
Chief, Regulatory Division

\_\_\_\_\_  
Date: 24 JUN 2011  
  
California State Historic Preservation Officer  
Milford Wayne Donaldson, FAIA  
California State Historic Preservation Officer

**INVITED SIGNATORIES**

**Yocha Dehe Wintun Nation**  
\_\_\_\_\_  
Date: 6/16/11  
  
Marshall McKay  
Tribal Chairman, Yocha Dehe Wintun Nation

**California Emergency Management Agency**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Brendan Murphy  
Governor's Authorized Representative

**City of Vacaville**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Rod Moresco  
Director of Public Works, City of Vacaville

**SIGNATORIES**

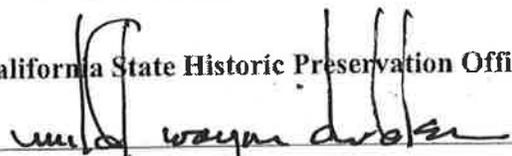
**Department of Homeland Security's Federal Emergency Management Agency**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Nancy Ward  
Regional Administrator, Region IX

\_\_\_\_\_  
Date: \_\_\_\_\_  
Alessandro Amaglio  
Environmental Officer, Region IX

**U.S. Army Corps of Engineers, Sacramento District**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Michael S. Jewell  
Chief, Regulatory Division

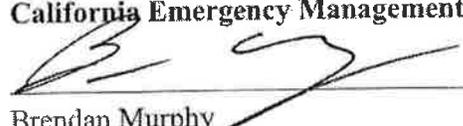
  
\_\_\_\_\_  
Date: **24 JUN 2011**  
Milford Wayne Donaldson, FAIA  
California State Historic Preservation Officer

**INVITED SIGNATORIES**

**Yocha Dehe Wintun Nation**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Marshall McKay  
Tribal Chairman, Yocha Dehe Wintun Nation

**California Emergency Management Agency**

  
\_\_\_\_\_  
Date: **5/27/11**  
Brendan Murphy  
Governor's Authorized Representative

**City of Vacaville**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Rod Moresco  
Director of Public Works, City of Vacaville

**ATTACHMENT 1**

**CULTURAL RESOURCES TREATMENT PLAN  
FOR THE PROPOSED ALAMO CREEK DETENTION BASIN,  
VACAVILLE, SOLANO COUNTY, CALIFORNIA**

**Attachment 1:**  
**Cultural Resources Treatment Plan**  
**Confidential: Not for Public Release**