

US EPA ARCHIVE DOCUMENT

**MEMORANDUM OF AGREEMENT  
AMONG  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY,  
ADVISORY COUNCIL OF HISTORIC PRESERVATION  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE DESIGN AND CONSTRUCTION OF A  
FIRE SUPPRESSION WATERLINE PROJECT AT THE  
MISSION SAN LUIS REY,  
OCEANSIDE, SAN DIEGO COUNTY, CALIFORNIA**

WHEREAS, the City of Oceanside proposes to construct a new public fire suppression waterline with hydrants at the Mission San Luis Rey ("Mission") located north of Mission Avenue at the terminus of Rancho Del Oro Drive in the City of Oceanside, California, to enhance fire protection of the Mission ("Project"); and

WHEREAS, the proposed pipeline would be approximately 945 meters long and would disturb an area approximately .5 meters wide and 1.2 meters deep in a City of Oceanside right-of-way (an approximately 6-meter-wide easement), and would follow two general paths: one oriented east/west across the central area of the Mission grounds, and a second along the eastern side of the Mission complex which runs north/south, both of which are in historically sensitive locations; and

WHEREAS, the City of Oceanside is the sponsor of the Project ("Project Sponsor") and has solicited funding pursuant to the United States Special Appropriation Act of 2003 administered by the U.S. Environmental Protection Agency ("EPA"); and EPA, as provided in 36 CFR § 800.1(a), is responsible for ensuring that projects, including the Project, developed with such funding comply with relevant federal laws and regulations, including Section 106 of the National Historic Preservation Act ("NHPA"); and

WHEREAS, the EPA is the lead federal agency for the Project under the National Environmental Policy Act of 1969 ("NEPA"), and has prepared a draft Environmental Assessment ("EA") which includes an evaluation of potential environmental effects, including prehistoric, historical architectural and cultural sites; and

WHEREAS, the Mission and its grounds (CA-Sdi-241) are designated a "National Historic Landmark" (No.7000142) and are, therefore an "historic property," as defined in 36 CFR § 800.16(p) and(l), respectively; and

WHEREAS, the EPA has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the NHPA; and

WHEREAS, in accordance with 36 CFR § 800.3(f)(2), EPA has identified the following Indian Tribes ("Potentially Affected Tribes") and Native American organization which may attach religious or cultural significance to historic properties in the project area: La Jolla Band of Luiseno Mission Indians, Pala Band of Luiseno Mission Indians, Pauma Band of Luiseno Mission Indians, Pechanga Band of Luiseno Mission Indians, Rincon Band of Luiseno Mission Indians, San Pasqual Band of Diegueno Indians, San Manuel Band of Serrano Mission Indians, Santa Ynez Band of Chumash Mission Indians, Soboba Band of Luiseno Indians, San Luis Rey Band of Mission Indians (not federally recognized), and Native American Environmental Protection Coalition; and

WHEREAS, EPA has consulted with and solicited information from the Potentially Affected Tribes and organization to assist EPA in identifying properties which may be of religious or cultural significance to them and may be eligible for the National Register, in accordance with 36 CFR § 800.4 and has invited such Tribes to be consulting parties in accordance with 36 CFR Part 800; and

WHEREAS, Pauma Band of Luiseno Mission Indians, and San Luis Rey Band of Mission Indians ("Participating Tribes") expressed interest to EPA in participating in this process and have been invited to concur on this Memorandum of Agreement ("MOA"); and

WHEREAS, EPA invited the Project Sponsor and the Franciscan Friars of Santa Barbara ("Franciscan Friars") to be consulting parties; and both parties have participated in the consultation and have been invited to concur on this MOA; and

WHEREAS, the EPA has determined that the waterline project constitutes an undertaking as defined at 36 CFR § 800.16(y), and found, in consultation with SHPO and Participating Tribes, that the Undertaking will adversely affect the subject National Historic Landmark; and

WHEREAS, EPA requested the Advisory Council on Historic Preservation ("ACHP") to participate in the consultation to resolve the Undertaking's adverse effects on the Mission and its grounds, pursuant to 36 CFR §§ 800.6(a)(1)(i)(B), 800.10(b); and by letter dated June 23, 2004, the ACHP stated that it would participate in the Section 106 consultation for the Undertaking; and

WHEREAS, the EPA has notified and invited the Secretary of the Interior, through the National Park Service (NPS), to participate in the consultation to resolve adverse effects on the Mission, a National Landmark pursuant to 36 CFR § 800.10(c); and by letter dated December 6, 2004, the NPS provided EPA with comments on the proposed Undertaking; and

WHEREAS, EPA provided the public, Potentially Affected Tribes, Franciscan Friars, SHPO and the ACHP with a copy of the EA and an opportunity to comment; and

WHEREAS, consistent with 36 CFR § 800.2(a)(3), while remaining responsible for complying with section 106 requirements, EPA has and will continue to use the services of the Project Sponsor and its consultants to prepare information, analyses and recommendations required by

this MOA; and

WHEREAS, EPA, the ACHP, and other consulting parties agree that the planning for the Undertaking has been made, to the maximum extent possible, in a manner that minimizes harm to the Mission in accordance with 16 USC § 470h-2(f); and

WHEREAS, the City of Oceanside, Participating Tribes, NPS and Franciscan Friars (collectively referred to as "Concurring Parties") participated in the consultation process; and are parties who are committed to implement actions pursuant to the "Stipulations" set forth below and have been invited to concur on this MOA;

WHEREAS, this MOA is not a fiscal or funds obligation document and does not require the signatory agencies to obligate or expend funds in excess of available appropriations; moreover, projects and activities that involve the transfer of funds, services, or property between the signatories will require the execution of a separate funding agreement, the negotiation, execution, and administration of which must comply with all applicable statutes and regulations, not materially alter the character of the Undertaking, and not conflict with the measures stipulated herein.

NOW, THEREFORE, EPA, the ACHP, and the SHPO ("Signatory Parties") agree that the Project will be implemented in accordance with the following stipulations.

## **STIPULATIONS**

EPA will ensure that the following measures are carried out; and by signing this MOA as a "Concurring Party," intending to be legally bound, the Project Sponsor agrees to the following:

### **I. DEFINITIONS**

The definitions set forth at 36 CFR § 800.16 are applicable throughout this MOA.

### **II. AREA OF POTENTIAL EFFECTS**

The Undertaking's APE is depicted in Attachment 1 to this MOA. No work related to the implementation of the Undertaking shall occur outside this APE. For the purpose of administering the measures in this MOA, the APE has been divided into eight segments. These segments are depicted in Attachment 1.

### **III. TREATMENT OF HISTORIC PROPERTIES**

- A. The Project Sponsor shall ensure that the adverse effect of the Undertaking on CA-SDI-241H is resolved by developing and implementing an historic property treatment plan (HPTP), which includes, at a minimum, the content described in Attachment 2 to this MOA.

- B. The HPTP will be prepared by the Project Sponsor, in consultation with EPA, the ACHP, and the SHPO, who will each have fifteen (15) days from receipt to comment on each draft of the plan. No ground-disturbing activities related to the implementation of the Undertaking will occur until the HPTP has been approved by all of the Signatory Parties.
- C. Amendment of the HPTP, as set forth hereunder (Stipulation VIII.D.), will not require amendment of this MOA. Amendments to the HPTP will go into effect upon written agreement by all Signatory Parties.

#### IV. REPORTING REQUIREMENTS

- A. Within twelve (12) months after the Project Sponsor, in consultation with SHPO, has determined that all fieldwork required under Stipulation III has been completed, the Project Sponsor will ensure preparation and concurrent distribution to the reviewing parties (EPA, SHPO, ACHP and Participating Tribes), a draft technical report that documents the results of implementing the requirements of that stipulation. The reviewing parties will be afforded thirty (30) days following receipt of the draft technical report to submit any written comments to the Project Sponsor. Failure of these parties to respond within this time frame shall not preclude the Project Sponsor from authorizing revisions to the draft technical report as the Project Sponsor may deem appropriate. The Project Sponsor will provide the reviewing parties with written documentation ("Review Response") indicating whether and how the draft technical report will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to the Project Sponsor within thirty (30) days following receipt, the Project Sponsor may modify the draft technical report as indicated in the Review Response. All objections shall be resolved pursuant to Stipulation VIII.C. Thereafter, the Project Sponsor may issue the technical report in final form and distribute this document in accordance with paragraph B of this stipulation.
- B. Copies of the final technical report documenting the results of implementing the requirements of Stipulation III, will be distributed by the Project Sponsor to the other reviewing parties and to the California Historical Resources Information System's South Coastal Information Center, subject to the terms of Stipulation VIII.B.

#### V. NATIVE AMERICAN CONSULTATION

EPA has consulted with a number of Indian tribes and a Native American group regarding the proposed Undertaking and its effect on historic properties, and will afford each of the Participating Tribes, the opportunity to participate in the implementation of this MOA. Such participation will include, but is not necessarily limited to, scheduling site visits during archaeological data recovery excavations and documentation efforts described in the HPTP (Attachment 2). Any Participating Tribe which would like to participate in the implementation of this MOA, shall contact the Signatory Parties and the Project Sponsor within 30 days of the execution of this MOA.

## **VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

The parties to this MOA agree that Native American burials and related items discovered during the implementation of the MOA's measures, at a minimum, will be respectfully treated in accordance with the requirements of California State Law (§ 7050.5 of Health & Safety Code and § 5097.98 of the Public Resources Code). Specifically, the Project Sponsor agrees to develop a plan per the HPTP section entitled, "Plan for Treatment and Disposition of Native American Remains and Associated Funerary Objects," (Attachment 2) which formalizes procedures for the treatment of Native American human remains, grave goods, ceremonial items and any cultural items that may be found during the implementation of the undertaking and takes into account the character of such procedures as presently set out in the "Pre-excavation Agreement Mission San Luis Rey," executed on August 30, 2002, between the San Luis Rey Band of Mission Indians and the Mission. Such plan, at a minimum, will set forth procedures which will be followed if Native American human remains are found, and at a minimum will include provisions for (1) identifying the Most Likely Descendant; and (2) notifying appropriate Tribe, to determine how human remains and grave goods should be treated and disposed of with appropriate dignity.

## **VII. DISCOVERIES AND UNANTICIPATED EFFECTS**

If the Project Sponsor determines during the implementation of either the HPTP or the Undertaking that such implementation will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, then the Project Sponsor will address the discovery or unanticipated effect in accordance with those provisions of 36 CFR § 800.13(b). If EPA determines that a discovered property is eligible for inclusion in the National Register, it shall be treated as such for the purposes of this MOA.

## **VIII. ADMINISTRATIVE STIPULATIONS**

### **A. STANDARDS**

1. Professional Qualifications. All activities prescribed by Stipulations III., IV., VI, and VII. of this MOA shall be carried out under the direct supervision of, a person or persons meeting at a minimum the Secretary of Interior's Standards *Professional Qualifications Standards* (48 FR 44738-39) (PQS) in the appropriate disciplines.
2. Historic Preservation Standards. All activities prescribed by Stipulations III, IV, VI, and VII of this MOA shall reasonably conform to applicable standards and guidelines established by the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44740) and SHPO.
3. Curation. The Project Sponsor shall ensure that, to the extent permitted under sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by Stipulations III, IV, VI, and VII

of this MOA are curated in accordance with 36 CFR Part 79 at a facility acceptable to EPA and the SHPO.

## **B. CONFIDENTIALITY**

The parties to this MOA acknowledge that historic properties covered by this MOA are subject to the provisions of section 304 of the NHPA relating to the disclosure of archaeological site information, and having so acknowledged agree to follow the procedures set forth in 36 CFR § 800.11(c), when applicable.

## **C. RESOLVING OBJECTIONS**

1. Should any signatory party to this MOA object in writing to EPA at any time to the manner in which the terms of this MOA are implemented, or to any action carried out or proposed with respect to the implementation of this MOA, or to any documentation prepared in accordance with and subject to the terms of this MOA, EPA shall immediately notify the other Signatory Parties to this MOA of the objection and consult with the objecting party and the other Signatory Parties to the MOA for no more than fourteen (14) days to resolve the objection. EPA shall reasonably determine when this consultation will commence. If the objection is resolved through such consultation, the action in dispute may proceed in accordance with the terms of that resolution. If, after initiating such consultation, EPA determines that the objection cannot be resolved through consultation, then EPA shall forward all documentation relevant to the objection to the ACHP, including EPA's proposed response to the objection, with the expectation that the ACHP will, within thirty (30) days after receipt of such documentation:
  - a. advise EPA that the ACHP concurs in EPA's proposed response to the objection, whereupon EPA will respond to the objection accordingly; or
  - b. provide EPA with recommendations, which EPA will take into account in reaching a final decision regarding its response to the objection; or
  - c. notify EPA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4), and proceed to refer the objection and comment. EPA shall take the resulting comments into account, and respond to them, in accordance with 36 CFR § 800.7(c)(4).
2. Should the ACHP not exercise one of the options set forth above, within thirty (30) days after receipt of all pertinent documentation, EPA may assume the ACHP's concurrence in its proposed response to the objection.
3. EPA shall take into account any ACHP recommendation or comment provided in

accordance with this stipulation with reference only to the subject of the objection. EPA's responsibility to carry out all other actions under this MOA that are not the subject of the objection will remain unchanged.

4. EPA shall provide all parties to this MOA, when the ACHP has issued comments hereunder, with a copy of its final written decision regarding and objection addressed pursuant to this stipulation.
5. EPA may authorize any action subject to objection under this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.
6. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to such implementation be raised by a member of the public, EPA shall notify all parties, in writing, of the objection and take the objection into consideration. EPA shall consult with the objecting party and, if the objecting party so requests, the SHPO for no more than fifteen (15) days. Within ten (10) days following closure of this consultation period, EPA will render a decision regarding the objection and notify all parties of its decision in writing. In reaching its decision, EPA will take into account any comments from all parties regarding the objection, including the objecting party. EPA's decision regarding the resolution of the objection will be final. EPA may authorize any action subject to objection under this paragraph to proceed after the objection has been resolved in accordance with the terms of this paragraph.

#### **D. AMENDMENTS**

1. Any signatory party to this MOA may propose that this MOA be amended, whereupon the parties to this MOA will consult for no more than thirty (30) days to consider such amendment. This MOA may be amended only upon the written agreement of all the Signatory Parties. If it is not amended, this MOA may be terminated by any signatory party in accordance with Stipulation VIII.E.
2. The HPTP may be amended through consultation among the Signatory Parties without amending the MOA proper (See Stipulation III.C.).

#### **E. TERMINATION**

1. If any signatory party proposes termination of this MOA, the signatory party proposing termination shall, in writing, notify the other parties to this MOA, explain the reasons for proposing termination, and consult with the other parties for a minimum of thirty (30) days to seek alternatives to termination, including an amendment per Stipulation VIII.D. Such consultation shall not be required if EPA

proposes termination because the Undertaking no longer meets the definition set forth in 36 CFR § 800.16(y).

2. Should such consultation result in an agreement by all Signatory Parties on an alternative to termination, then the Signatory Parties shall amend the MOA accordingly and proceed accordingly.
3. Should such consultation fail, the signatory party proposing termination may terminate this MOA by promptly notifying the other parties to this MOA in writing. Termination hereunder shall render this MOA without further force or effect.
4. If this MOA is terminated hereunder, and EPA determines that the Undertaking will nonetheless proceed, or if the EPA finds it necessary to materially alter the character of the Undertaking or modify the above measures to a degree that consultation under Stipulation VIII.D above cannot accommodate, then EPA shall either consult in accordance with 36 CFR § 800.6 to develop a new MOA or request the comments of the ACHP pursuant to 36 CFR § 800.7.

#### **F. DURATION OF THE MOA**

Unless terminated pursuant to Stipulation VIII.E. above, or unless it is superseded by an amended MOA, this MOA will be in effect following execution by the Signatory Parties until EPA, in consultation with the other Signatory Parties, determines that all of its stipulations have been satisfactorily fulfilled. This MOA will terminate and have no further force or effect on the day that EPA notifies the other parties in writing of its determination that all stipulations of this MOA have been satisfactorily fulfilled.

1. The terms of this MOA shall be satisfactorily fulfilled within five (5) years following the Effective Date of Stipulation VIII.G below. If EPA determines that this requirement cannot be met, the parties to this MOA will consult to reconsider its terms. Reconsideration may include continuation of the MOA as originally executed, amendment, or termination. In the event of termination, EPA will comply with Stipulation VIII.E.4 if it determines that the Undertaking will proceed notwithstanding termination of this MOA.
2. If the Undertaking has not been implemented within five (5) years following execution of this MOA, this MOA shall automatically terminate and have no further force or effect. In such event, EPA shall notify the other parties in writing and, if it chooses to continue with the Undertaking, shall comply with Stipulation VIII.E.4.

**G. PUBLIC PARTICIPATION**

In providing notice and information to the public regarding the resolution of adverse effects of the Undertaking, consistent with 36 CFR § 800.2(d)(3), EPA will follow the procedures for public involvement under NEPA.

**H. EFFECTIVE DATE**

In order to more expeditiously implement the agreement set forth herein, the Parties to this MOA agree that the MOA may be executed in two or more counterparts as if all parties signed one document and each executed counterpart shall be regarded as if it were an original document. The original executed counterparts shall be kept by EPA. This MOA will take effect on the date that it has been executed by all of the Signatory Parties.

**EXECUTION** and implementation of this MOA, pursuant to 36 CFR § 800.6, including its transmittal by the EPA to the ACHP in accordance with 36 CFR § 800.6 (b)(1)(iv), shall evidence that the EPA has taken into account the effects of this Undertaking on historic properties in order to resolve (avoid, minimize or mitigate) any adverse effects on historic properties and thereby comply with Section 106 of the NHPA, and shall further evidence that the EPA has afforded the ACHP an opportunity to comment on the Undertaking and its effect on historic properties.

**SIGNATORY PARTIES:**

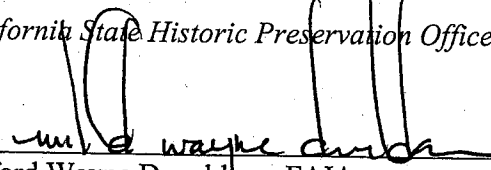
*U.S. Environmental Protection Agency*

By Alexis Strauss 13 November 2006  
Alexis Strauss Date  
Director, Water Division

*Advisory Council on Historic Preservation*

By John M. Fowler 3/22/07  
John M. Fowler Date  
Executive Director

*California State Historic Preservation Officer*

By   
Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer

30 NOV 2006  
Date

**CONCURRING PARTIES:**

*City of Oceanside*

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

TITLE

*Franciscan Friars of California, St. Barbara Province*

By \_\_\_\_\_  
Friar James Lockman, OFM  
Executive Director  
Date

*Pauma Band of Luiseno Mission Indians*

By \_\_\_\_\_  
Chris Devers  
Tribal Chairperson  
Date

*San Luis Rey Band of Luiseno Mission Indians*

By \_\_\_\_\_  
Russell Romo  
Captain  
Date

*California State Historic Preservation Officer*

By \_\_\_\_\_  
Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer  
Date \_\_\_\_\_

**CONCURRING PARTIES:**

*City of Oceanside*

By \_\_\_\_\_  
Date 1/19/07  
TITLE \_\_\_\_\_  
*Franciscan Friars of California, St. Barbara Province*

By \_\_\_\_\_  
Friar James Lockman, OFM  
Executive Director  
Date \_\_\_\_\_

*Pauma Band of Luiseno Mission Indians*

By \_\_\_\_\_  
Chris Devers  
Tribal Chairperson  
Date \_\_\_\_\_

*San Luis Rey Band of Luiseno Mission Indians*

By \_\_\_\_\_  
Russell Romo  
Captain  
Date \_\_\_\_\_

**APPROVED AS TO FORM  
OCEANSIDE CITY ATTORNEY**  
\_\_\_\_\_  
**BARBARA L. HAMILTON**  
Assistant City Attorney

*California State Historic Preservation Officer*

By \_\_\_\_\_  
Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer

\_\_\_\_\_ Date

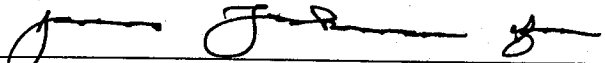
**CONCURRING PARTIES:**

*City of Oceanside*

By \_\_\_\_\_  
TITLE \_\_\_\_\_

\_\_\_\_\_ Date

*Franciscan Friars of California, St. Barbara Province*

By  \_\_\_\_\_  
Friar James Lockman, OFM  
Executive Director

11/08/2006  
\_\_\_\_\_ Date

*Pauma Band of Luiseno Mission Indians*

By \_\_\_\_\_  
Chris Devers  
Tribal Chairperson

\_\_\_\_\_ Date

*San Luis Rey Band of Luiseno Mission Indians*

By \_\_\_\_\_  
Russell Romo  
Captain

\_\_\_\_\_ Date

*California State Historic Preservation Officer*

By \_\_\_\_\_  
Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer  
Date \_\_\_\_\_

**CONCURRING PARTIES:**

*City of Oceanside*

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

TITLE

*Franciscan Friars of California, St. Barbara Province*

By \_\_\_\_\_  
Friar James Lockman, OFM  
Executive Director  
Date \_\_\_\_\_

*Pauma Band of Luiseno Mission Indians*

By Chris Devers  
Chris Devers  
Tribal Chairperson  
Date 1/25/07

*San Luis Rey Band of Luiseno Mission Indians*

By \_\_\_\_\_  
Russell Romo  
Captain  
Date \_\_\_\_\_

*California State Historic Preservation Officer*

By \_\_\_\_\_ Date \_\_\_\_\_  
Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer

**CONCURRING PARTIES:**

*City of Oceanside*

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

TITLE

*Franciscan Friars of California, St. Barbara Province*

By \_\_\_\_\_ Date \_\_\_\_\_  
Friar James Lockman, OFM  
Executive Director

*Pauma Band of Luiseno Mission Indians*

By \_\_\_\_\_ Date \_\_\_\_\_  
Chris Devors  
Tribal Chairperson

*San Luis Rey Band of Luiseno Mission Indians*

By Russell L Romo \_\_\_\_\_ Date 1/2/07  
Russell Romo  
Captain

*California State Historic Preservation Officer*

*State Historic Preservation Officer*

*California State Historic Preservation Officer*



## ATTACHMENT 2

### MINIMUM CONTENT FOR THE HPTP, STIPULATION III.A

The purpose of this attachment is to outline the minimum content of the HPTP that the EPA, the Council, and the SHPO agree will be developed to resolve the Undertaking's adverse effect on CA-SDI-241H. The HPTP will guide the Undertaking's implementation prior to, during, and after the subject waterline's installation.

#### DATA RECOVERY PLAN

##### GENERAL PRINCIPLES

*Regulatory Context.* The Council and the SHPO understand the data recovery methods outlined below to be a way to address resolution of potential effects on the Undertaking. These methods afford the Project Sponsor a considerable amount of discretion to make decisions about the disposition of archaeological deposits that have been determined to be eligible for the National Register at a national level of significance and that may ultimately be determined to contribute to the significance of the National Historic Landmark beneath which the deposits lie.

*Personnel.* The efficacy of the data recovery methods outlined here rests entirely on the provision that the Project Sponsor employ a Principal Archaeological Investigator (Principal Investigator) who meets the Secretary of the Interior's Qualification Standards and is, further, an expert in the Spanish Colonial and Mexican period archaeology of California. It is critical to the approach here that the Principal Investigator be present in the field to supervise the excavation of the different APE segments and to make field decisions on the disposition of the various archaeological elements that are found.

The success of this approach further rests on the provision that the Project Sponsor employ a Project Geoarchaeologist who has graduate training in that discipline to document and interpret the physical stratigraphy of the historic property (CA-SDI-241H), and to provide the Principal Investigator with expertise and counsel on the physical contexts of the architectural elements, the features, and the material culture assemblages that are found.

A Project Native American Monitor is another critical member of the data recovery phase effort. The monitor will provide expert local knowledge of the archaeological deposits under study and provide counsel to the Project Sponsor and the Principal Investigator on values that the deposits may have to the Luiseno Band of Mission Indians beyond the values of which the other parties to this MOA may be aware. The input of the Project Native American Monitor is to be actively sought and substantively considered during the implementation of every stage of the data recovery plan. The Project Native American Monitor shall be designated by those Participating tribes that have notified the Project Sponsor and the Signatory Parties pursuant to Stipulation V.

*Principle of In Situ Preservation.* The Project Sponsor agrees to adhere to a policy, during the

implementation of the Undertaking, of leaving finds of architectural ruins and archaeological features securely in place and of diverting the subject waterline beneath or around them. The Project Sponsor further agrees that should the Project Sponsor find an architectural ruin or archaeological feature that it cannot avoid, the Project Sponsor shall consult EPA, the Council and the SHPO under the provisions of the discovery plan outlined below.

#### BACKGROUND RESEARCH

Prior to the initiation of data recovery phase fieldwork, the the Project Sponsor shall ensure that the Principal Investigator, in consultation with the Project Geoarchaeologist, gathers and analyzes the entire complement of field data for the inventory phase of the Undertaking (Jack Williams) and for the monitoring phase of San Diego Gas and Electric's recent electric utility undergrounding project (Affinis). The Project Sponsor shall use the results of this analysis to inform, in part, the development of the research design for the data recovery phase work proposed here and to guide the Principal Investigator and the Project Geoarchaeologist in the field during the execution of this work.

The Project Sponsor shall also ensure that the Principal Investigator gathers and analyzes primary and secondary source materials on the history and the historical archaeology of Mission San Luis Rey, and prepares historic and historical archaeological contexts to facilitate the interpretation of the material finds that result from the implementation of the present data recovery plan.

#### RESEARCH DESIGN

Prior to the initiation of data recovery phase fieldwork, the Project Sponsor shall ensure that the Principal Investigator develops a research design appropriate to the resolution of data that each of the two tiers of the data recovery phase fieldwork will provide. One tier will be the fieldwork for APE segments 1-4, and 8, and the other tier will be the fieldwork for APE segments 5-7. The basis for the research design will be the results of the background research above.

#### FIELD PROCEDURES

*APE Segments 1-4, and 8.* The Project Sponsor will detail, in the data recovery plan, the following procedures for the installation of the subject waterline in APE segments 1-4, and 8:

1. Using a standard backhoe with a standard bucket with teeth, the Project Sponsor would excavate the waterline trenches in these APE segments in a manner left to the Project Sponsor's discretion.
2. An archaeological monitor under the direct supervision of the Principal Investigator and the Project Native American Monitor shall participate in the excavation of these APE segments in the manner that such monitors participated in the recent San Diego Gas and Electric electric utility undergrounding project. The data recovery plan shall specify the procedures for this manner of monitoring.
3. The Project Sponsor shall ensure that the Project Geoarchaeologist documents one, 1 m-long profile along a trench face for each of the APE segments 1-4, and 8, for a total of

five (5) profiles. The data recovery plan shall clearly specify, with reference to the Recordation of Archaeological Stratigraphy section below, the manner in which the Project Sponsor will document these profiles. The Project Geoarchaeologist shall brief the Principal Investigator and the Project Native American Monitor on the results of the documentation of each profile as each profile is completed.

*APE Segments 5-7.* The Project Sponsor will detail, in the data recovery plan, the following procedures for the installation of the subject waterline in APE segments 5-7:

1. Prior to the excavation of the waterline trenches in each of these APE segments, the Principal Investigator and the Project Geoarchaeologist would direct the excavation of a short (< 3 m) exploratory trench on the centerline of the proposed alignment for the waterline. The purpose of the exploratory trenches would be to define the local stratigraphic sequence for each APE segment, and to discern the potential presence and the local character of deposits that represent Spanish Colonial and Mexican period use surfaces. The exploratory trenches would be excavated with a standard backhoe using a standard bucket with a smooth edge. It would be up to the Project Sponsor's discretion to devise the smooth edge by, for example, spot-welding a section of angle iron to the standard bucket teeth, or any other method that would achieve a comparable bucket edge. Excavation of the exploratory trenches would proceed by the backhoe removing each discernible stratum, in turn, and creating separate backdirt piles for the fill of each stratum. The data recovery plan will specify the procedures for this method of excavation and provide for the screening of a small (15-30 gal.) sample of the fill from each stratum to characterize the material culture content of each.
2. If, on the basis of the above exploratory trenches, the Principal Investigator and the Project Geoarchaeologist determine, through consensus, that deposits that represent Spanish Colonial and Mexican period use surfaces exist, then the Principal Investigator and the Project Geoarchaeologist would direct the excavation of the strata above such deposits to approximately 10 cm above the upper contact of those deposits. The removal of this overburden would occur with a standard backhoe with a standard bucket with teeth. When the Principal Investigator and the Project Geoarchaeologist agree that any of the overburden strata represent eroded adobe brick or other debris related to the post-abandonment collapse of the mission compound, then those strata would be removed en masse. When the Principal Investigator and the Project Geoarchaeologist agree that any of the overburden strata represent Spanish Colonial or Mexican period material culture in a secondary, or "disturbed" context, then those strata would also be removed en masse. A small sample of these strata would, however, be screened for significant Spanish Colonial and Mexican period objects. The data recovery plan will specify the procedures for the excavation of the exploratory trenches, and the sample size and methods for the screening of secondary deposits.
3. Once the extent of the deposits that represent Spanish Colonial and Mexican period use surfaces are known, the Principal Investigator shall have the sole discretion to structure and select a 10 percent sample of those deposits. The Principal Investigator shall personally direct, in the field, the excavation of that sample. Excavation of the 10 percent sample of Spanish Colonial and Mexican period deposits and the final 10 cm of

overburden that caps that sample shall occur with hand tools. Hand excavation should occur in a manner that provides for the documentation of each discrete stratigraphic context. For example, when distinguishable, deposits and constituent artifacts immediately above a compacted use surface would be documented separately from the artifact assemblages found resting on or embedded in that compacted use surface. Hand excavation would proceed until the Principal Investigator and the Project Geoarchaeologist agree that Spanish Colonial and Mexican period deposits have been exhausted. The data recovery plan will specify procedures necessary to implement the above manner of hand excavation.

4. Once the hand excavation of the above Spanish Colonial and Mexican period sample is complete, a small sample of the deposits that immediately underlay Spanish Colonial and Mexican period deposits will be screened to discern the presence of and to describe the material character of any Native American remains that predate the establishment of the mission. Should any human remains be found, the Project Sponsor agrees to follow the procedures set forth in the "Plan for Treatment of Human Remains of Native American Origin." The data recovery plan will specify the procedures for the excavation of this sample, the sample size, and the method of its screening.
5. The Project Sponsor shall ensure that the Project Geoarchaeologist documents one, 1 m-long profile along a trench face for each locale where a portion of the 10 percent sample of the Spanish Colonial and Mexican period deposits was taken, or a total of three (3) profiles in the event that the 10 percent sample is taken as a single, continuous excavation block. Ideally, such profiles would include the lower contact of the Spanish Colonial and Mexican period deposits and a portion of the underlying pre-mission deposits. The data recovery plan shall clearly specify, with reference to the Recordation of Archaeological Stratigraphy section below, the manner in which the Project Sponsor will document these profiles.
6. Subsequent to the removal of the small pre-mission sample, the balance of the waterline trenches would be excavated using a standard backhoe with a standard bucket with teeth. The Project Sponsor would excavate the balance of the waterline trenches in a manner left to the Project Sponsor's discretion.
7. An archaeological monitor under the direct supervision of the Principal Investigator and the Project Native American Monitor shall participate in the excavation of the balance of the waterline trenches in the manner that such monitors participated in the recent San Diego Gas and Electric electric utility undergrounding project. The data recovery plan shall specify the procedures for this manner of monitoring.

*Recordation of Archaeological Stratigraphy.* The data recovery plan shall specify how the Project Sponsor will document the archaeological stratigraphy of the deposits that the installation of the subject waterline will truncate. The documentation of trench profiles would ideally include thorough descriptions of lithostratigraphic and pedostratigraphic units, constituent sediment analysis and description, and textural analysis and description of unit sediments. The Project Sponsor shall also consider the use of the Harris Matrix system to document the archaeological contexts of the data recovery finds, and evidence such consideration.

*Construction Phasing.* The EPA and the Project Sponsor may phase the excavation of the

portions of the waterline trenches that will occur mechanically in any manner necessary to facilitate the efficient use of the construction equipment.

#### LABORATORY ANALYSES

The Project Sponsor shall specify the types of material cultural, biological, chemical, and geoarchaeological analyses that it envisions using during the course of its data recovery investigations, and explain how these methods are relevant to the research design above.

#### REPORTING

The Project Sponsor shall prepare, revise, and distribute the technical report for the data recovery phase work in accordance with stipulation IV of this MOA. The data recovery plan shall specify, among other elements of the technical report, the criteria relative to which the Project Sponsor will decide the quantity and the character of the graphic representation of the physical contexts and the material finds that it will include in the report.

#### PLAN FOR TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN

The Project Sponsor shall prepare a "Plan for Treatment of Human Remains of Native American Origin," which formalizes procedures for the treatment of Native American human remains, grave goods, ceremonial items and any cultural items that may be found during the implementation of the undertaking and takes into account the character of such procedures as presently set out in the "Pre-excavation Agreement Mission San Luis Rey," executed on August 30, 2002, between the San Luis Rey Band of Mission Indians and the Mission. Such plan, at a minimum, will set forth procedures which will be followed if Native American human remains are found, and at a minimum will include provisions for (1) identifying the Most Likely Descendant; and (2) notifying appropriate Tribe, to determine how human remains and grave goods should be treated and disposed of with appropriate dignity.