

**MEMORANDUM OF AGREEMENT
AMONG THE
VETERANS AFFAIRS LONG BEACH HEALTHCARE SYSTEM, THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING FACILITY IMPROVEMENTS AT LONG BEACH
MEDICAL CENTER, LONG BEACH, CALIFORNIA**

WHEREAS, the Veterans Affairs Long Beach Healthcare System (VALBHS) proposes to conduct subsurface excavations for facility improvements on its campus at 5901 East Seventh Street, Long Beach, California (see Attachment A) which constitutes an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), (54 USC 306108) and its regulations (36 CFR Part 800); and

WHEREAS, the VALBHS initiated consultation with the California State Historic Preservation Officer (SHPO) pursuant to the standard review process as identified under 36 CFR Part 800 on August 14, 2014, and provided additional information requested by SHPO on October 23, 2014; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), VALBHS notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP, by letter dated September 12, 2014, has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the VALBHS invited the Native American Graves Protection and Repatriation Act (NAGPRA) committee of neighboring California State University Long Beach, the City of Long Beach Historic Preservation Planner, the Pacific Coast Archaeological Society, and archeologists who have performed previous work at VALBHS to participate as consulting parties pursuant to 36 CFR § 800.2 on October 23, 2014; and

WHEREAS, the VALBHS initiated consultation on May 21, 2014 with "Tribal Organizations," defined herein as non-federally recognized local groups, including and limited to the Gabriellino-Tongva Tribe, the Gabriellino Tongva Indians of California, the Gabrieleno/Tongva Nation, the Gabrieleno/Tongva San Gabriel Band of Mission Indians, the Tongva Ancestral Territorial Tribal Nation, the Gabriellino Band of Mission Indians-Kizh Nation and the Ti'at Society; and

WHEREAS, the Signatories of this Memorandum of Agreement (MOA) recognize that traditionally associated Tribal Organizations possess the expertise to identify and evaluate historic properties of religious and cultural significance on the VALBHS campus; and

WHEREAS, SHPO concurred on November 17, 2014 with the VALBHS determination that none of the campus buildings are eligible for National Register of Historic Places (NRHP)

inclusion (Appendix 1); and

WHEREAS, the Area of Potential Effects (APE) for the undertaking is defined as the entire VALBHS campus (Attachment A), which is part of the Puvungna Indian Villages District (CALAN-234 in particular) listed on the NRHP in 1974, (National Register Reference Number 7400052); and

WHEREAS, SHPO concurred on November 17, 2014 with the VALBHS determination that the undertaking will adversely affect an archeological historic property as a result of subsurface excavations up to twenty feet below the surface (refer to Appendix 1), and traditionally associated Tribal Organizations agree; and

WHEREAS, the VALBHS, the SHPO and the ACHP agree that the exact location and nature of the historic property cannot be identified prior to implementation of the undertaking due to the developed nature of the APE with the ground surface obstructed by buildings, parking lots and landscaping; and

WHEREAS, the VALBHS, SHPO, and traditionally associated Tribal Organizations agree that the undertaking will adversely affect historic properties of religious and cultural significance to traditionally associated American Indian tribes and groups; and

WHEREAS, this MOA provides the mechanism to resolve the adverse effects of the undertaking and complete any and all requirements of Section 106 with regard to any activities relating to the undertaking; and

NOW THEREFORE, the VALBHS, the SHPO and the ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

I. VA will implement a Historic Property Treatment Plan

- A. VALBHS will ensure that the Historic Property Treatment Plan (HPTP) attached hereto (Attachment B) is implemented.
- B. Should VA determine that changes to the HPTP are needed, VA will consult with the SHPO and such other parties as are interested in the matter to effect such changes, affording the parties at least thirty (30) days to consult, and need not amend the Memorandum of Agreement (MOA) in accordance with Stipulation VIII unless dispute resolution pursuant to Stipulation VII indicates that such further consultation is needed.

II. Tribal Organization Cultural Monitoring

Except as provided in paragraph II.C below, VALBHS will ensure that actions involving ground disturbance shall be conducted with at least one Tribal Organization monitor present to ensure that construction actions and archeological data recovery activities are carried out in a manner

that is respectful of tribal interests and concerns. Tribal Organization cultural monitoring will occur during the course of ground disturbing activities as described in the VALBHS NAGPRA Plan of Action (POA) (Attachment C). VALBHS will also invite the Tribal Organization monitor to attend project meetings and prepare a summary report of non-confidential findings.

- A. Evaluation of Archeological Sites/Components;** Any evaluation of the significance of archeological sites and/or components will take into account the cultural significance ascribed to the Puvungna District by the Tribal Organizations for its association with the origin of the religious tradition *Chinichngish* and as the home of a culture hero important in this religious tradition. Any evaluations made with reference to NRHP shall address all Criteria (36 CFR 60.4(a) through (d)).
- B. Observation and Traditional Treatment;** VALBHS will afford representatives of the Tribal Organizations the opportunity to inspect and review all artifact collections and records from the project for the purpose of identifying sacred objects and objects of cultural patrimony. Representatives of the Tribal Organizations shall have the opportunity to inspect the excavations while in progress and perform traditional ceremonies per the VALBHS NAGPRA POA (Attachment C).
- C.** Where it appears that ground disturbance has little or no potential to disturb cultural material (for example, where it occurs only in recently deposited fill, or at depths below those at which cultural material could occur), VA may elect, following consultation with the signatories of this agreement, to terminate excavation monitoring.

III. Standards and Special Conditions

- A. Definitions.** The definitions provided at 36 CFR 800.16 are applicable throughout this MOA.
- B. Project Standards.** The standards, guidelines, regulations, and codes cited below shall be followed in execution of the undertaking:
 - 1. Professional qualification standards.** Individuals meeting the Secretary of Interior's Professional Qualifications Standards for prehistoric archeology (48 FR 44738-39) shall directly supervise all archaeological activities implemented pursuant to this MOA.
 - 2. Curation standards.** VALBHS shall curate non-NAGPRA artifacts and records resulting from actions stipulated by this MOA in accordance with 36 CFR 79. VALBHS will adhere to the curation agreement with Fowler Museum.
 - 3. Disclosure of archeological site information.** The signatories to this MOA acknowledge that historic properties covered by this MOA are subject to the provisions of Section 304 of the National Historic Preservation Act, as amended relating to the disclosure of archeological site information.

IV. Duration

This MOA will take effect on the date that it is signed by the last signatory and filed with ACHP and will expire ten (10) years from the date of its execution. Prior to such time if the terms are not satisfactorily carried out, VALBHS may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI.

V. Post-review Discoveries

If archeological historic properties are discovered or unanticipated effects on such historic properties found, the VALBHS shall implement the NAGRAPA POA and the HPTP (Attachments B & C). If other types of potential historic properties are encountered, VALBHS shall follow 36 CFR 800.13(b).

VI. Monitoring and Reporting

Each year following the execution of this MOA until it expires or is terminated, VALBHS shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in VALBHS's efforts to carry out the terms of this MOA.

VII. Dispute Resolution

Should any signatory party to this MOA object at any time in writing to VALBHS to any actions proposed or the manner in which the terms of this MOA are implemented, VALBHS shall notify the other signatory parties about the objection and consult with such party to resolve the objection. If VALBHS determines that such objection cannot be resolved through consultation, VALBHS will:

- A. Forward all documentation relevant to the dispute, including the VALBHS's proposed resolution, to the ACHP. The ACHP shall provide VALBHS 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, VALBHS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. VALBHS will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, VALBHS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, VALBHS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. VALBHS's responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute shall remain unchanged.

- D.** At any time during implementation of this MOA, should an objection to any stipulation or the manner of implementation be raised in writing by a member of the public or consulting parties, VALBHS shall take the objection into account and consult as needed with the objecting party, the ACHP and the SHPO to resolve the objection.

VIII. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall notify in writing the other signatories to and consult to develop an amendment per Stipulation VII. If within thirty (30) days (or another time 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, VALBHS 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. VALBHS shall notify the signatories as to the course of action it will pursue.

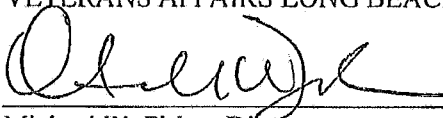
X. ANTI-DEFICIENCY CLAUSE

This agreement is subject to the Anti-Deficiency Act (31 U.S.C. Section 1341). VALBHS's responsibilities under this agreement are contingent upon the availability of appropriated funds from which payment, if any, can be made. Should funds not be available to allow VALBHS to meet its responsibilities, it will defer its final decision(s) on implementing the undertaking until it has re-initiated consultation and complied with 36 CFR §§ 800.4 through 800.7 as applicable.

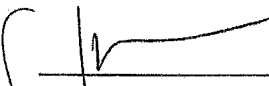
Execution of this MOA by VALBHS, the SHPO, and the ACHP and implementation of its terms evidence that the VALBHS has taken into account the effects of this undertaking on historic properties and has afforded the ACHP an opportunity to comment.

Signatories

VETERANS AFFAIRS LONG BEACH HEALTHCARE SYSTEM

 Date: 7/28/15
Michael W. Fisher, Director

CALIFORNIA HISTORIC PRESERVATION OFFICER

 Date: 30 July 15
Julianne Polanco

ADVISORY COUNCIL ON HISTORIC PRESERVATION

 Date: 8/5/15
John M. Fowler, Executive Director

LIST OF APPENDICES AND ATTACHMENTS

Appendix 1. SHPO letter of concurrence with VALBHS determinations

Attachment A. Undertaking and Area of Potential Effect Description and Maps

Attachment B. VALBHS Historic Property Treatment Plan

Attachment C. VALBHS NAGPRA Plan of Action

Attachment D. Curation Agreement with Fowler Museum