

*Finalized Agreement
+ Draft District*

PROGRAMMATIC AGREEMENT
AMONG
THE DEPARTMENT OF THE ARMY
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
BASE CLOSURE AND REALIGNMENT ACTIONS AT
FORT ORD, CALIFORNIA

WHEREAS, the Department of the Army (Army) has determined that the closure, interim lease, and transfer of certain portions of Fort Ord, California under the authority of the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510), commonly known as BRAC 91, may have an effect on properties eligible for inclusion in the National Register of Historic Places (historic properties); and

WHEREAS, the Army has consulted with the Advisory Council on Historic Preservation (Council) and the California State Historic Preservation Officer (SHPO) pursuant to 36 Code of Federal Regulations Part 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and Section 110 (16 U.S.C. 470h-2) of the same Act; and

WHEREAS, the Area of Potential Effect (APE) for this undertaking is understood to be those lands within the contiguous boundaries of Fort Ord; and

WHEREAS, the terms of this agreement are to apply to those Fort Ord lands that are being disposed of as part of the BRAC 91 action; and

WHEREAS; the Army in consultation with the SHPO has designed and completed a Phase I Archeological Survey for prehistoric sites on land to be transferred out of Federal ownership and located no historic properties; and

WHEREAS, the Army, in accordance with the provisions of a Programmatic Memorandum of Agreement among the United States Department of Defense, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers regarding the Demolition of World War II Temporary Buildings, effective June 7, 1986, as amended, has completed all mitigation required prior to the transfer of World War II temporary buildings (1939-1946); and

WHEREAS, the definitions for Archeological Survey, notice/notification, Archeologist, Architectural Historian and Historic Architect given in Appendix A are applicable throughout this Programmatic Agreement; and

WHEREAS, interested members of the public and Native Americans have been provided an opportunity to comment on the effects BRAC 91 may have on historic properties at Fort Ord.

NOW, THEREFORE, the Army, the Council and the SHPO, agree that the BRAC 91 closure, lease, and transfer of certain portions of Fort Ord shall be administered in accordance with the following stipulations, in order to satisfy the Army's Section 106 and 110 responsibilities for all individual undertakings included in this Programmatic Agreement.

STIPULATIONS

The Army will ensure that the following measures are carried out.

I. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES:

The Army will provide the SHPO with recommendations of National Register eligibility for properties within the APE on lands that will be transferred out of Federal ownership. Based upon the information obtained from testing and evaluation, the Army will determine, in consultation with the SHPO, the eligibility of the properties for inclusion in the National Register in accordance with 36 CFR 800.4(c). If the Army and the SHPO fail to agree upon the National Register eligibility of the property, the Army will obtain a determination from the Secretary of the Interior pursuant to 36 CFR 800.4 (c)(4).

II. TRANSFER OR INTERIM LEASE OF REAL PROPERTY AND IMPROVEMENTS THAT DO NOT INCLUDE HISTORIC PROPERTIES:

The Army will transfer and/or lease real property and improvements that do not include historic properties identified under Stipulation I, above, without further action under this Agreement.

III. TRANSFER OF REAL PROPERTY AND IMPROVEMENTS BY THE ARMY TO ANOTHER FEDERAL AGENCY THAT WILL ASSUME LAND MANAGEMENT RESPONSIBILITIES:

The Army will provide notification to the signatories of this agreement within forty-five (45) calendar days after the transfer of Fort Ord real property to Federal agencies that plan to assume land management responsibilities and use the land for purposes no more likely to adversely affect historic properties than those for which the lands were used by the Army prior to BRAC 91.

IV. TRANSFER OF HISTORIC PROPERTIES IDENTIFIED UNDER STIPULATION I:

A. Transfer to Another Federal Agency for Subsequent Transfer to Non-Federal Entities Under Federal Surplus Property Programs:

1. Transfer Under the Surplus Property Program for Historic Monuments: The Army will notify the signatories of this

agreement within forty-five (45) calendar days after the transfer of historic properties under the provisions of An Act to Facilitate the Preservation of Historic Monuments and Other Purposes (86 Stat. 503, 40 U.S.C. 484(k)(3) & (k)(4)), August 4, 1972, as amended, which require the preservation of those properties as Historic Monuments.

2. Transfer Under All Other Surplus Property Programs:
With the exceptions noted in Stipulation V, separate preservation covenants enforceable under California State Law and/or Federal case law, if applicable, for each historic property will be developed jointly by the signatories to this agreement and attached to the transfer documents prior to the transfer of that property by the Army. The covenants will be enforced by the Federal Agency administering the surplus property program (sponsoring agency), the California State Office of Historic Preservation, or another entity acceptable to all the signatories of this agreement. If the sponsoring agency transfers the property without modifying the covenant(s) drafted by the signatories to this agreement and registers the deed in the proper office(s) in accordance with state and local law, no further actions under Section 110 or 106 of the National Historic Preservation Act will be required prior to transfer of the property. If the sponsoring agency proposes to modify the covenants, the proposed modifications will be considered a separate undertaking and the sponsoring agency shall comply with 36 CFR Part 800.4.

B. Transfer by the Army to Non-Federal Entities:
With the Exceptions noted in Stipulations IV and V., separate preservation covenants enforceable under California State law and/or Federal Case law, if applicable, for each historic property identified under Stipulation I, above, will be developed jointly by the signatories to this agreement and attached to the deed prior to the transfer of that parcel by the Army and the deed will be registered in the proper office (s) in accordance with state and local law. The covenant(s) will be enforced by the California State Office of Historic Preservation or another entity acceptable to all of the signatories of this agreement. The Army will make every reasonable effort to configure the boundaries of parcels that include historic properties in accordance with the purposes of the covenants.

V. TRANSFER WITHOUT MANAGEMENT COVENANTS:

The Army will make a good faith effort to transfer each historic property with a preservation covenant. If such efforts fail and following consultation between the parties to this agreement, the properties may be transferred without a preservation covenant.

VI. LEASE OF HISTORIC PROPERTIES:

If the Army determines that the lease of real property that includes historic properties identified in Stipulation I, is required, the Army will, in consultation with the SHPO and the Council, develop and include clauses in the lease that require the management of the identified historic property or properties.

The Army or other entity acceptable to all parties to this agreement will enforce the lease. If agreement on the provisions of a lease cannot be reached, the Army will treat that lease as a separate undertaking and comply with 36 CFR Part 800.5 prior to leasing the parcel in question.

VII. ENVIRONMENTAL TESTING AND CLEANUP:

A. With the exception of Archeological and Architectural Monitoring stipulated in paragraph VII.C., the Army will proceed with environmental testing and cleanup, to include the disposal of unexploded ordnance, without further consultation under this Agreement.

B. Prior to initiating testing, cleanup, or unexploded ordnance disposal, the work crew(s) will be made aware of the potential for currently unlocated archaeological sites.

C. When the Army determines that archeological monitoring of an environmental cleanup site will not pose a risk to human health or safety, all ground disturbing activities inside National Register eligible sites, previously identified unevaluated sites, and sites discovered during the course of the work will be monitored by an archeologist. In the event that an archeological site(s) is located, a reasonable effort will be made to avoid or reduce adverse effects on the site(s). When testing and cleanup has the potential to affect historic building materials, the Army will ensure that the work plans and specifications are reviewed by an Historic Architect or Architectural Historian and consider their recommendations to avoid or reduce adverse effects on the historic materials. The Army will provide the SHPO and the Council with copies of a report(s) documenting these actions within ninety (90) calendar days after monitoring at each property is completed.

D. If, during the process of conducting environmental testing and cleanup and/or disposal of unexploded ordnance, a previously unidentified archeological site is discovered, the Army will, after the cleanup/disposal is complete but prior to the transfer from Federal ownership, evaluate the site and consult with the SHPO to determine if it is eligible for inclusion in the National Register.

E. If Native American cultural items, as defined in Section 2(3) of the Native American Graves Protection and Repatriation Act (NAGPRA) are encountered during the process of conducting

environmental testing and cleanup and/or disposal of unexploded ordnance, these activities will cease in the immediate vicinity of the discovery and the procedures in NAGPRA Section 3(d) will be followed. Headquarters Department of the Army (Army Environmental Center) and relevant Native American groups will be notified of the discovery.

VIII. HISTORIC RECORDS:

A. All maps, drawings, prints, studies, and other written documentation that relate to Fort Ord historic properties and are currently located at the Fort Ord Directorate of Public Works and Public Affairs Offices, or are produced by the Army in connection with the implementation of this Agreement, will be transferred to, and retained by, the Frasidio of Monterey Command Historian. An inventory of documents transferred under this stipulation will be provided to the SHPO, the U.S. Army Center for Military History, the Monterey County Public Library System, the Monterey County Historical Society and the Monterey History and Art Association.

B. All materials and records resulting from archeological survey/data recovery conducted during the implementation of this Agreement shall be curated in accordance with 36 CFR Part 79, except for those items transferred pursuant to the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

IX. ANNUAL REPORT:

The Army will prepare an annual report first due on April 30, 1995 on its implementation of this Programmatic Agreement and last due ninety (90) days after this implementation is complete. The report will be provided concurrently to the SHPO and the Council for review, comment, and consultation as needed. The annual report shall include information on the undertakings implemented under this Agreement. If the Council and/or the SHPO do not object within thirty (30) days of receiving such report, it will be assumed that they concur with the implementation of this Agreement.

X. DISPUTE RESOLUTION:

Should the SHPO and/or Council object in writing within twenty (20) calendar days to any actions, plans, specifications, or reports provided for review pursuant to this FA, the Army shall consult with the objecting party or parties to resolve the objection; if it cannot be resolved, the Army shall forward relevant documentation, the Council will either:

1. Inform the Army that the Council intends to comment pursuant to 36 CFR 800.6(b), or

2. Provide the Army with recommendations that the Army shall take into account prior to a final decision

The Army's responsibility to carry out all actions under this agreement that are not subjects of the dispute will remain unchanged.

XI. SHPO/COUNCIL MONITORING AND REVIEW:

The Council and SHPO may review activities carried out pursuant to this agreement and will review such activities if so requested. The Army will cooperate with the Council and SHPO in carrying out their monitoring and review responsibilities.

XII. PUBLIC OBJECTION:

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by any member of the public, the Army shall take the objection into account and consult as needed with the objecting party, the Council and SHPO to resolve the objection.

XIII. AMENDMENTS:

Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such an amendment. No amendment to this agreement shall be effective until it has been executed by all consulting parties.

XIV. TERMINATION:

Any party to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided the parties consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Army will comply with 36 CFR Part 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

XV. FAILURE TO EXECUTE THIS AGREEMENT: In the event the Army does not carry out the terms of this Programmatic Agreement, the Army will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this agreement.

Execution and Implementation of this Programmatic Agreement evidences that the Army has satisfied its Sections 106 and 110 responsibilities for all individual undertakings of the Base Closure and Realignment of Fort Ord.

FORT ORD, CALIFORNIA

BY: Thomas F. Ellzey, Jr.

Date: 18 April 1994

THOMAS F. ELLZEY, JR., COL, AV COMMANDING

DEPARTMENT OF THE ARMY

BY: John H. Little

Date: 3 May 94

JOHN H. LITTLE, MAJOR GENERAL, USA,
ASSISTANT CHIEF OF STAFF FOR INSTALLATION
MANAGEMENT

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: Robert Z. Idell

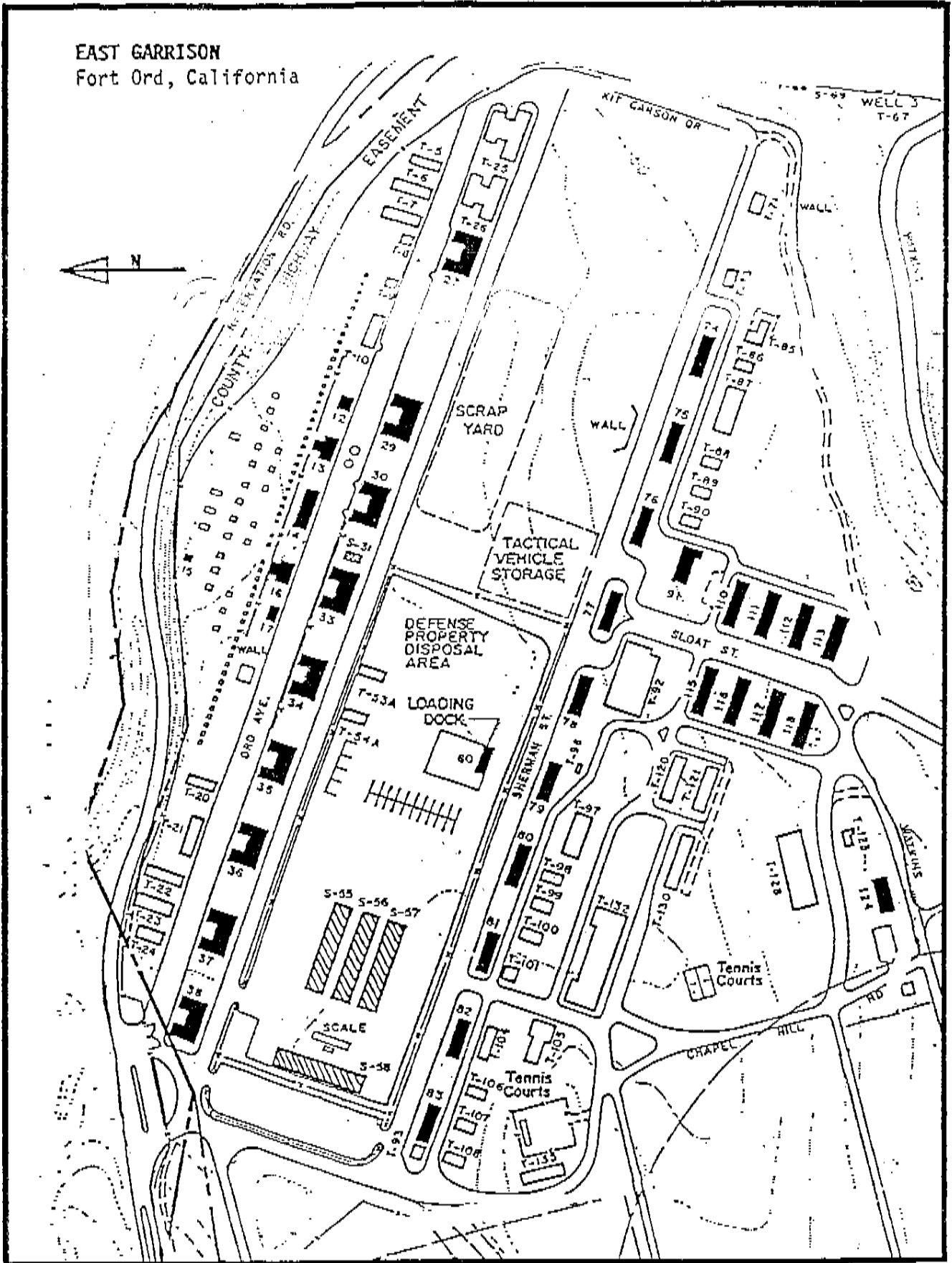
Date: April 19, 1994

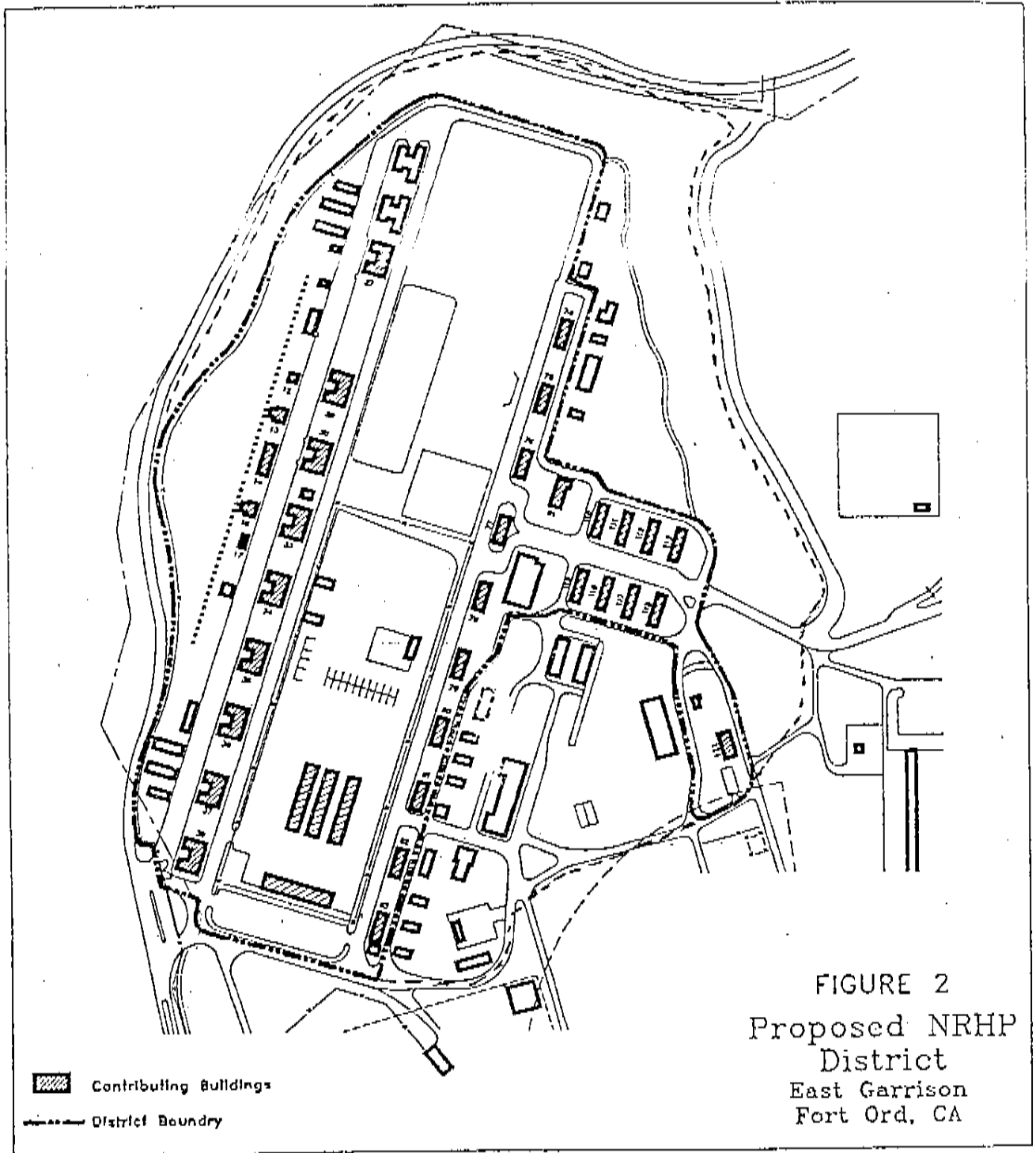
ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: Robert D. Bush

Date: 5/5/94

EAST GARRISON
Fort Ord, California





STANDARD PRESERVATION COVENANT FOR BUILDINGS AND STRUCTURES

1. In consideration of the conveyance of certain real property hereinafter referred to as (name of property), located in the County of (name), State of California, which is more fully described as: (Insert legal description.), (Name of property recipient) hereby covenants on behalf of (himself/herself/itself), (his/her/its) heirs, successors, and assigns at all time to the United States Army and the California Office of Historic Preservation to preserve and maintain (name of property) in accordance with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service 1992) in order to preserve and enhance those qualities that make (name of property) eligible for inclusion in the National Register of Historic Places.
2. No construction, alteration, remodeling or other modification shall be undertaken or permitted to be undertaken on (name of property) which would affect the integrity or appearance of this property without the express written permission of the California Office of Historic Preservation.
3. The California Office of Historic Preservation shall be permitted at all reasonable times to inspect (name of property) in order to ascertain if the above conditions are being observed.
4. The California Office of Historic Preservation shall provide written notice of approval or denial of the proposed construction alteration, remodeling or other activity which offends the principles of clause one of this agreement. In the case of a denial, the reason or reasons shall be stated in the notice.
5. In the event of a violation of this covenant, and in addition to any remedy now or hereinafter provided by law, the California Office of Historic Preservation may, following reasonable notice to (name of recipient), institute suit to enjoin said violation or to require the restoration of (name of property). The successful party shall be entitled to recover all costs or expenses incurred in connection with such suit, including all court costs and attorneys fees.
6. In the event that a Building or Restricted Facade (i) is substantially destroyed by fire or other casualty, or (ii) is not totally destroyed by such fire or casualty, but damage thereto is so serious that restoration would be financially impractical in the reasonable judgment of the Owner, this Preservation Restriction shall terminate on the date of such destruction or casualty. Upon such termination, the Owner shall deliver a duly executed and acknowledged notice of such termination to the California Office of Historic Preservation, and record a duplicate original of said notice in the Registry of Deeds. Such notice shall be conclusive evidence in favor of every person dealing with the Premises as to the facts set forth therein.

7. (Name of recipient) agrees that the California Office of Historic Preservation may at its discretion, without prior notice to (name of recipient), convey and assign all or part of its rights and responsibilities contained herein to a third party.

6. This covenant is binding on (name of recipient), (his/her/its) heirs, successors, and assigns in perpetuity, unless waived by the California Office of Historic Preservation. Restrictions, stipulations, and covenants contained herein shall be inserted by (name of recipient) verbatim or by express reference in any deed or other legal instrument by which (he/she/it) divests (himself/herself/itself) of either the fee simple title or any other lesser estate in (name of property) or any part thereof.

7. The failure of the California Office of Historic Preservation to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

The covenant shall be a binding servitude upon (name of property) and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that (name of recipient) agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.