

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE COUNTY OF MONTEREY, CALIFORNIA
AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE
TRANSFER OF TITLE OF 2.5 ACRES OF LAND**

WHEREAS, the United States plans to transfer title of 2.5 acres of land out of Federal ownership to the County of Monterey, California; and

WHEREAS, the US Army is the owner of the land to be transferred, which is located at US Army Garrison Fort Hunter Liggett in Jolon, California; and

WHEREAS, the County of Monterey, California, is the entity who will receive the transferred property and is a Certified Local Government (CLG) pursuant to Section 101(c) of the NHPA; and

WHEREAS, the US Army has defined the undertaking's area of potential effects (APE) as the entire 10.3 archaeological site CA-MNT-794H, which is owned by the US Army, as described in Attachment A; and

WHEREAS, the US Army has determined that the undertaking may have an adverse effect, pursuant to 36 CFR § 800.5(a)(2)(vii), on archaeological site CA-MNT-794H, which will be treated as eligible for listing on the National Register of Historic Places (NRHP), and on the Tidball Store building, which is listed on the NRHP, and has consulted with the California State Historic Preservation Office (SHPO), pursuant to 36 CFR Part 800, the implementing regulation for Section 106 of the NHPA, and

WHEREAS, the Tidball store, which is owned by the County is located on the federal land to be transferred, and is therefore within the APE but not part of the property to be transferred, as shown in Attachment A, and

WHEREAS a total of 2.5 acres of the 10.3 acre archaeological site CA-MNT-794H will be transferred to the County, and the other 7.8 acres of the site will remain as US Army property, and

WHEREAS, the County currently is required to obtain a Right-of-Entry from the US Army to enter the County-owned Tidball Store, and has requested to receive the land for convenience to both parties, and so it can more effectively manage the building; and

WHEREAS, the US Army has consulted with the County of Monterey, and has invited it to sign this MOA as an Invited Signatory pursuant to §800.6(c)(2), and

WHEREAS, in accordance with the 36 CFR § 800.6(a)(1), the US Army, has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP, in a letter dated October 2, 2014, declined to participate (Attachment B) in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the US Army has identified no federally recognized Indian tribes who have potential concerns for properties of traditional religious and cultural importance for this portion of Monterey County associated with the property to be transferred;

WHEREAS, letters were sent on December 23, 2013 to the non-federally recognized Tribes and other Interested Parties inviting them to comment on the proposed property transfer, and additional follow-up contacts were made by email and/or telephone, however no comments from tribal members were received. Tribal consultation was conducted with Mrs. Judith Bomar Grindstaff (Salinan), Mr. John Burch (Salinan Tribe of Monterey, San Luis Obispo, and San Benito Counties), Mr. Gary Macagni (Salinan Tribe of Monterey, San Luis Obispo, and San Benito Counties), Ms. Bonnie Pierce (Salinan), Ms. Shirley Macagni (Salinan Tribe of Monterey, San Luis Obispo, and San Benito Counties), Mr. Frank Arredondo (Chumash), Mr. Gregg Castro (Salinan Nation Cultural Preservation Association), Ms. Susan Latta (Salinan Tribe), Ms. Mary Rodgers (Salinan/Ohlone), Ms. Barbara Tavena (Salinan Tribe), Mr. Frederick Segobia (Salinan Tribe), Mr. Jose Freeman (Salinan Nation Preservation Association), Ms. Donna Haro (Xolon Salinan Tribe), Mr. Robert Duckworth (Salinan Tribe), and Ms. Xielolixii (Salinan Nation) and

WHEREAS, in accordance with 36 CFR § 800.6(a)(4), the US Army has provided the public an opportunity to comment on the proposed undertaking through the NHPA Section 106 process, and through public circulation of a draft Environmental Assessment; and no objections were received; and

NOW, THEREFORE, the US Army, the SHPO, and the County agree that the undertaking shall be implemented in accordance with the following stipulations in order to resolve the effects of the undertaking on historic properties.

STIPULATIONS

I. TREATMENT OF HISTORIC PROPERTIES

1. The County shall maintain the Tidball Store in accordance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68)*, and according to the Monterey County Code of Ordinances, Chapter 18.25, which states that any project that may impact a historic resource is referred to the County's Historic Resources Review Board for consideration.
2. The County agrees to manage the 2.5 acres of land, which includes portions of the archaeological site CA-MNT-794H, as if it were listed in the Monterey County Local Register of Historic Places. The County agrees to follow the County Code Section 21.66.050, which establishes *Standards for Archeological Resource Areas*, and requires the preparation of an archeological resource report prior to development, the avoidance of known resources when feasible, and implementation of a mitigation plan when avoidance is not feasible.
3. The US Army shall provide hard and digital copies of all survey materials and other related archival materials related to the Tidball Store and CA-MNT-794H to the County prior to the transfer of the property.

II. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGINS

The parties to this MOA agree that human remains and related items discovered during the implementation of the terms of this MOA and of the undertaking will be treated in accordance with the requirements of §7050.5(b) of the California Health and Safety Code (HSC). If pursuant to HSC §7050.5(c), the Monterey County coroner/medical examiner determines that the human remains are or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of California Public Resources Code §5097.98(a)-(d). The County shall ensure that, to the extent permitted by applicable law and regulation, the views of Tribes and the Most Likely Descendent(s), as determined the California Native American Heritage Commission, are taken into consideration when decisions are made about the disposition of Native American materials and records. The treatment of human remains will also be regulated by the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 et seq.) until the land transfer is completed.

III. DEFINITIONS

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

IV. PROFESSIONAL QUALIFICATIONS AND STANDARDS

a. The County will ensure that the actions and products required by Stipulations I-II of this MOA will be carried out by or under the direct supervision of persons meeting the *Secretary of the Interior's Professional Qualification Standards (48 FR 44738-39) (PQS)*, in the relevant field of study.

b. All written documentation prescribed in Stipulations I-II of this MOA shall conform to the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44740) (PQS)* as well as to applicable standards and guidelines established by the SHPO.

V. DISCOVERIES AND UNANTICIPATED EFFECTS

If the County discovers a previously unidentified property or an unanticipated effect on the property after the undertaking has occurred, the County will address the discovery or unanticipated effect in accordance with 36 CFR §800.13(b)(3).

VI. DISPUTE RESOLUTION

a. Should any party to this MOA object at any time in writing to the manner in which the terms of this MOA are implemented, to any action carried out or as proposed with respect to implementation of the MOA, the US Army shall immediately notify the other parties of the objection, request their comments on the objection within fifteen (15) days, following receipt of the US Army's notification, and proceed to consult with the objecting party for no more than thirty (30) calendar days to resolve the objection.

b. If such objection cannot be resolved within the thirty (30) day timeframe, the US Army will:

i. Forward all documentation relevant to the dispute, including US Army proposed resolution, to the ACHP. The US Army will also provide a copy to all signatories. The ACHP will provide the US Army 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, the US Army will 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. The US Army will then proceed according its final decision.

ii. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the US Army may make a final decision on the dispute accordingly. Prior to reaching such a final decision, the US Army will prepare a written response that takes into account any timely comments

regarding the dispute from the signatories and concurring parties to this MOA, and provide them an the ACHP with a copy of such written response.

- c. The US Army and Monterey County will carry out all other actions subject to the terms of this MOA that are not subject to the dispute.

VII. AMENDMENTS

Any signatory party to this MOA may propose that this MOA be amended, whereupon all signatory parties shall consult to consider such an amendment. The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation VII below.

VIII. TERMINATION

- a) Any signatory party can propose to terminate the MOA. The signatory party proposing termination shall, in writing, notify the other signatories, and explain the reasons for proposing termination, and consult with the other parties for at least 30 days to seek alternatives to termination.
- b. If the MOA is terminated, and prior to the undertaking taking place, the US Army 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. The US Army shall notify the signatories as to the course of action it will pursue.

IX. DURATION OF THE MOA

- a. This MOA will become effective upon transfer of the property by the United States to Monterey County or upon execution by the parties, whichever is later.
- b. Unless terminated pursuant to Stipulation VII, or superseded by another MOA, this MOA will be in effect for five years following the execution by the signatory parties. The signatory parties may consult prior to this expiration date to consider an amendment pursuant to Stipulation VII to extend the duration of the MOA if necessary. If the land transfer has not been executed within 5 years from the effective date, this MOA will expire.

X. ANTI-DEFICIENCY ACT

All requirements set forth in this MOA requiring expenditure of Army funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341). No obligation undertaken by the

Army under the terms of this MOA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose.

XI. EXECUTION

This MOA by the US Army, the County, and the SHPO and the implementation of its terms, evidences that the Army has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

United States Army Garrison, Fort Hunter Liggett

By: _____ Date: _____
Donna R. Williams,
Colonel, US Army
Commanding

California State Historic Preservation Officer

By: _____ Date: _____
Carol Roland-Nawi
State Historic Preservation Officer

INVITED SIGNATORIES:

County of Monterey

By: _____ Date: _____
Louis Calcagno
Chair of the Board of Supervisors

Attachment A

Area of Potential Effect

USAG Fort Hunter Liggett
Environmental Division
Tidball Store Land Transfer



-  2.5 Acres to be Transferred to Monterey County
-  Area of Potential Effect CA-MNT-794H
-  Tidball Store and one acre of land - listed on NRHP

0 0.01 0.02 0.03 0.04 Miles

0 9 18 27 36 Meters



Attachment B



Preserving America's Heritage

October 2, 2014

Mr. Gary Houston
Environmental Division Chief
U.S. Army Garrison Fort Hunter Liggett
Building 238 California Avenue
Fort Hunter Liggett, CA 93928-7000

Ref: *Proposed Tidball Store Land Transfer
Fort Hunter Liggett, Monterey County, California*

Dear Mr. Houston:

The Advisory Council on Historic Preservation (ACHP) recently received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on properties listed on and eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800) does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or another party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR 800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the California State Historic Preservation Officer (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the Agreement and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with your notification of adverse effect. If you have any questions or require further assistance, please contact Katharine Kerr at 202-517-0216, or via email at kkerr@achp.gov.

Sincerely,

Raymond V. Wallace
Historic Preservation Technician
Office of Federal Agency Programs