A photograph of a desert landscape. In the background, a tall Joshua tree stands prominently against a pale sky. The foreground and middle ground are filled with various desert shrubs and bushes, some with small yellow flowers. A white rectangular box with a dark blue border is overlaid on the lower right portion of the image, containing the text "Appendix O Programmatic Agreement" in a bold, dark blue serif font. A small orange flag is visible on the ground near the bottom center of the image.

**Appendix O
Programmatic
Agreement**

**PROGRAMMATIC AGREEMENT
AMONG
THE DEPARTMENT OF THE ARMY NATIONAL TRAINING CENTER,
FORT IRWIN, CALIFORNIA AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE IDENTIFICATION, EVALUATION, AND MANAGEMENT OF
HISTORIC PROPERTIES AFFECTED BY MILITARY TRAINING EXERCISES
AND REQUIRED SUPPORT OPERATIONS
WITHIN THE NATIONAL TRAINING CENTER AND
PROPOSED EXPANSION AREAS**

WHEREAS, a Memorandum of Agreement providing for compliance with Section 106 of the National Historic Preservation Act of 1966 in the development and management of the National Training Center (NTC) was ratified by the Chairman of the Advisory Council on Historic Preservation on September 17, 1981; and,

WHEREAS, the Memorandum of Agreement of 1981 was amended by consent of all parties on July 8, 1983 (collectively, MOA and AMOA); and,

WHEREAS, the Department of the Army has since expanded the National Training Center (the NTC, also known as Fort Irwin) and now intends to utilize those two "Expansion Areas" (Superior and Avawatz) for military training exercises and required support operations (the "Undertaking"); and,

WHEREAS, the use of these Expansion Areas will also result in the implementation of new management strategies and land uses within the "Southern Corridor" of the previously existing area of the NTC (also considered part of the Undertaking); and,

WHEREAS, the NTC will proceed with the implementation of the Undertaking on a schedule determined by available funding and other management concerns; and,

WHEREAS, the NTC successfully utilized an "Archaeological Predictive Model (APM)" to identify areas likely to contain historic properties within the new land expansion areas, including the "Southern Corridor", and this APM is suitable for defining archaeological "Probability Areas" under this Programmatic Agreement (PA); and,

WHEREAS, the NTC has determined that the Undertaking may affect properties at NTC that are included in, are, or may become eligible for inclusion in the National Register of Historic Places (historic properties), and has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to §§ 800.6(a)(1) and 800.14(b) of 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f), to take into account the effects of the Undertaking on historic properties, and will execute this

PA pursuant to §800.6(b)(1) because the ACHP has informed NTC pursuant to §800.6(a)(1)(iii), that it declines to participate in this consultation; and,

WHEREAS, the NTC has provided the public an opportunity to express their views on the resolution of the Undertaking's effects on historic properties through the Environmental Impact Statement review process and,

WHEREAS, throughout the implementation of the PA, the NTC shall consult with the fourteen Federally-Recognized Indian Tribes (Indian Tribes) that may attach religious or cultural significance to historic properties in the area of potential effects (APE) on the NTC proper and the new expansion areas, and seek and consider the comment of the two Federally-Unrecognized Tribes; and,

WHEREAS, the NTC invited the fourteen Indian Tribes to participate in the process leading to the development of this PA the NTC provided subsequent revised copies of this PA to the fourteen Indian Tribes, each was contacted by mail, fax, and telephone, and they did not offer comments; and,

WHEREAS, no comments have been received from the fourteen Indian Tribes that were thus contacted, this Programmatic Agreement may not reflect their opinions;

NOW, Therefore, the NTC and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and that these stipulations shall govern the Undertaking until this PA expires or is terminated.

STIPULATIONS

The NTC shall ensure that the following stipulations are carried out:

I. APPLICABILITY

The signatory parties agree that upon execution of this PA, the two Expansion Areas (Superior and Avawatz) and the Southern Corridor shall no longer be subject to the MOA and the AMOA, and shall instead be subject exclusively to this PA.

II. DEFINITIONS

For purposes of this PA, the following definitions apply:

A. Archaeological Predictive Model (APM)

The need for the identification of historic properties on the Expansion Lands and the Southern Corridor within the NTC was the impetus for the development of the APM. The purpose of the APM is to increase the efficiency of survey efforts by delineating the areas most likely to contain sites based on a suite of environmental variables. A

full description of this modeling methodology is contained in Ruiz (2003), which is included in the Appendix to this PA.

B. Area of Potential Effects (APE)

The APE for the Undertaking consists of the two land expansion areas, Superior and Avawatz, and the Southern Corridor. This APE is shown on Map 1 in the Appendix to this PA.

C. “Expansion Areas” are defined as the two newly acquired areas of the NTC and include the Avawatz and Superior Areas on the southeast and southwest boundaries of the previously existing NTC, respectively (see Map 1 in the Appendix to this PA).

D. “Federally Unrecognized Tribes” that do not qualify individually as “Indian tribe” under 36 C.F.R. 800.16(m). NTC has identified two such groups that may attach religious or cultural significance to historic properties on Fort Irwin—the Kawaiisu Tribe of the Tejon Indian Reservation, California; and the Pahrump Band of Paiutes, California and Nevada.

E. “Indian Tribes” refers to Indian Tribes as defined by 36 C.F.R. 800.16(m), “recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” NTC has identified fourteen Federally Recognized Indian Tribes that hold interest in the cultural resources of Fort Irwin and with whom the NTC consults. These Indian Tribes were identified in an “Ethnographic and Ethnohistoric Overview and Cultural Affiliation Study of Fort Irwin Region and the Central Mojave Desert” prepared by ethnographer David Earl (2004). That study was undertaken to provide information on traditional native uses of the NTC and the new expansion lands and to identify traditional cultural properties and places that may be of cultural significance to these Tribal communities. The Federally Recognized Indian Tribes the NTC consults with include the Big Pine Paiute Tribe of Owens Valley, California; the Bishop Paiute Tribe, California; the Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; the Fort Independence Community of Paiute Indians, California; the Fort Mojave Indian Tribe, Arizona; the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; the Lone Pine Paiute Shoshone Tribe, California; the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; the Morongo Band of Cahuilla Mission Indians of the Morongo Indian Reservation, California; the San Manuel Band of Serrano Mission Indians; the Timbisha Shoshone Tribe, California; and the Twenty-Nine Palms Band of Mission Indians, California.

F. “Probability Areas” are areas where sites are most likely to be found based on a combination of environmental parameters. “Probability Areas” are classed as High, Medium, or Low depending on the likelihood of archaeological sites being present as determined by the APM. See the discussion under “Archaeological Predictive Model (APM)” and refer to Map 2 in the Appendix to this PA.

- G. "Southern Corridor" refers to the area along the southern periphery of the previously existing NTC that will be used in conjunction with training carried out in the Expansion Areas.
- H. "Undertaking" refers to the use of the Expansion Areas and the Southern Corridor for force-on-force and long-distance live fire maneuver training and associated logistic support activities.

III. HISTORIC PROPERTY IDENTIFICATION

- A. To meet its identification and evaluation responsibilities for historic properties that may be affected by the Undertaking, NTC shall complete the following actions:
 - 1. Identification and evaluation of historic properties within the Avawatz Expansion Area will be completed within one year of the date of execution of this PA.
 - 2. Identification and evaluation of historic properties within the Superior Expansion Area will be completed within five years of the execution of this PA.
- B. All identification and evaluation shall be conducted according to the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation following the procedures set forth herein with the understanding that complete, intensive field inspections of all Expansion Lands that will be used as Live Fire or Force-on-Force training areas are not required.
- C. The APM delineates Probability Areas and thus can be used to streamline archaeological surveys to areas where cultural resources are most likely to be found, based on environmental parameters. Probability Areas thus defined for the Expansion Areas are shown on Map 2 in the Appendix to this PA.

IV. CONSIDERATION OF EFFECTS TO HISTORIC PROPERTIES BASED ON TRAINING AREA USE INTENSITY

The density of activity that occurs during maneuver training is limited by many factors including terrain, off limits areas, and other restrictions. In general, the training area may be subdivided into High Use, Medium Use, Low Use, and No Use Areas, which result in different levels of effects within the overall APE for the Undertaking (see Map 3 in the Appendix to this PA). The following definitions are provided for each "Use Area":

- 1. High Use Area: Unlimited cross-country movement by unlimited vehicle types (wheeled and track). The Undertaking in High Use areas will likely have an adverse effect on historic properties.
- 2. Medium Use Area: Movement restricted to roads and for setting up staging and or assembly areas. The Undertaking in Medium Use areas may have the potential

for adversely affecting historic properties, particularly in washes and other natural access routes.

3. Low Use Area: Vehicles remain on established roads, no staging areas, and dismounted (i.e. foot soldiers) traffic off roads. The Undertaking in Low Use areas will avoid any identified historic properties.

4. No Use Area: Off limits (no entry). The Undertaking in No Use areas will have no effect on historic properties, as these areas will be closed to all traffic.

V. PRIORITIZING HISTORIC PROPERTY IDENTIFICATION AND EVALUATION

A. NTC will prioritize historic property identification and evaluation as follows:

1. In areas of high archaeological site probability on areas of High Use there will be an intensive survey covering 100% of the surface area. Where the view of the surface of the mineral soil is in some manner obstructed and a 100% survey is not possible, NTC will devise and execute a statistically significant sampling strategy to take into account the possible presence of historic properties in such areas of poor visibility.

2. In areas of high archaeological site probability on areas of Medium Use, a sample survey will focus on areas of road potential and staging areas.

3. In areas of high archaeological site probability on areas of Low and No Use, surveys will focus on areas of road potential.

B. Selected areas will be surveyed in quadrants 1 by 0.5 km in size and will be examined by pedestrian survey accomplished using linear transects spaced 20 m apart. In the Avawatz Expansion Area, 10,134.4 acres have been previously surveyed. An additional 6,910 acres will be examined for a total survey area of 17,044.4 acres or approximately 41.9% of the total Avawatz Expansion Area. In the Superior Expansion Area, 28,275.8 acres were previously surveyed. An additional 1,050 acres will also be examined for a total of 29,235.8 acres, or 51.9% of the overall Superior Expansion Area (refer to Map 4 in the Appendix to this PA).

C. All sites identified during archaeological survey will be recorded on standard State of California site forms, photographs will be taken, and site locations recorded with a GPS unit. The site forms and other associated materials will be forwarded to the Archaeological Information Center at the San Bernardino County Museum. In addition, all site information will be added to NTC's FICRD database that contains an inventory of all sites recorded on the installation.

VI. SITE TESTING AND EVALUATION

All sites identified pursuant to stipulations II. and IV., above, will be subjected to some degree of subsurface archaeological testing so that they may be evaluated for their eligibility for inclusion in the National Register of Historic Places (NR) pursuant to 36 CFR 60.6. Site testing and evaluation strategies will vary based on the size and complexity of each site identified but will closely follow the minimum guidelines listed in Table 1 contained in the Appendix to this PA.

VII. TREATMENT OF HISTORIC PROPERTIES

All archaeological sites considered to be eligible for inclusion in the NR that are subject to adverse effects from the Undertaking will be treated as follows:

1. Such sites will be protected in place to the greatest feasible extent through notation in the electronic operations control system, fencing, signing, or other means, provided necessary NTC operations and operations of users of NTC lands are not unreasonably impeded; or
2. Where protection in place is not possible and an adverse effect cannot be avoided, NTC will consult with the Indian Tribes and SHPO pursuant to 36 CFR § 800.6 to resolve the adverse effects of the Undertaking on historic properties.

VIII. NATIVE AMERICAN CONSULTATION

NTC will make a reasonable attempt to develop consultation procedures (protocols) in cooperation with both Recognized and Unrecognized Indian Tribes to establish uniform methods and procedures for meeting consultation requirements as specified in 36 CFR 800. Consultation protocols, when finalized, will be incorporated as an Appendix to this PA.

IX. TREATMENT OF NATIVE AMERICAN HUMAN REMAINS

NTC shall treat all Native American human remains and associated funerary objects, sacred objects, and/or objects of cultural patrimony encountered during implementation of this PA and of the Undertaking in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), its implementing regulations (43 CFR Part 10), and AR 200-4. When such items are encountered, all use of the immediate area by the NTC shall be suspended, the remains and items will be protected in place to the greatest extent possible, and the immediate area will be secured until the Indian Tribes are contacted and consultation is undertaken to determine appropriate methods for the disposition of the human remains and associated cultural items. All such consultation and subsequent actions shall be conducted in full accordance with the provisions of 43 CFR Part 10.

X. ADMINISTRATIVE PROVISIONS

A. Professional Qualifications, Documentation Standards, and Curation

1. NTC shall ensure that all cultural resource work required by this PA is carried out by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Professional Qualifications Standards (PQS) in the appropriate disciplines, outlined in 36 CFR Part 61 Appendix A. However, nothing in this stipulation may be interpreted to preclude NTC, or any agent or contractor thereof, from using services of persons who do not meet the PQS, provided such persons are directly supervised by individuals who meet the PQS.

2. Documentation Standards

NTC shall ensure that documentation prepared in partial fulfillment of the stipulations in this PA is consistent with the *Secretary of the Interior's Standards for Archaeological Documentation* and the *Secretary of the Interior's Guidelines for Archaeological Documentation* (48 FR 44734-44737).

3. NTC shall ensure that all records and materials resulting from activities carried out pursuant to this PA are curated pursuant to 36 CFR 79 or treated and disposed of in accordance with the provisions of NAGPRA, 43 CFR 10, as applicable.

B. Confidentiality

1. The signatories to this PA acknowledge that certain cultural resources covered by this PA are subject to the provisions of § 304 of the NHPA and the Archaeological Resources Protection Act (ARPA, 16 U.S.C. 470hh[a]) relating to the disclosure of archaeological and sacred site information to the public and, having so acknowledged, will ensure that all actions and documentation prescribed by this PA are consistent with § 304 of the NHPA and ARPA 16 U.S.C. 470hh (a).

2. The NTC and SHPO recognize that some information regarding Traditional Cultural Properties will be obtained by consultation with Indian Tribes and Federally Unrecognized Tribes in recognition of their particular expertise concerning such resources.

C. Report Distribution

NTC shall ensure that copies of all technical reports prepared to satisfy the terms of this PA are provided upon completion to the SHPO and the appropriate California Historical Resources Information System Center. The content of these reports shall be subject to the confidentiality requirements set forth in Section B. of this stipulation.

D. Annual Review and Reporting

1. No later than one year after execution of this PA, and by the anniversary date of such execution each year thereafter, until the signatories to this PA agree in writing that its terms have been fulfilled, NTC will prepare and provide to the SHPO and to each Indian Tribe and Federally Unrecognized Tribe involved in any action covered by this PA a written report that includes, but is not necessarily limited to the following:

a. A descriptive section that indicates how many actions were undertaken and that describes and discusses how and with what results, the requirements of Stipulations III. – IX., inclusive, were met for each action;

b. An assessment of the effectiveness of this PA;

c. A discussion of any problems or unexpected issues encountered during the year;

d. Any changes that NTC believe should be made in implementing this PA.

2. The SHPO, Indian Tribe(s), and Federally Unrecognized Tribe(s) shall have 45 days from the date of receipt to provide NTC with comments on the annual report. NTC shall take all comments received into account when considering modifications to this PA.

3. At the request of the SHPO or any participating Indian Tribe, NTC shall hold a consultation meeting to facilitate review and comment on the annual report, or to resolve questions, issues or adverse comments that have been raised by the SHPO, participating Indian Tribe(s), or Federally Unrecognized Tribe(s).

E. Resolving Objections

1. Should the SHPO object at any time to the manner in which the terms of this PA are implemented, or to any action carried out or proposed with respect to implementation of the PA (other than the Undertaking itself) or to any documentation prepared in accordance with and subject to the terms of this PA, NTC shall immediately consult with the SHPO, for no more than 30 days to resolve the objection. NTC shall reasonably determine when this consultation will commence and may either on its own initiative or upon receipt of a request from the SHPO, extend the consultation period herein prescribed. 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, NTC determines that the objection cannot be resolved through consultation, then NTC shall forward all documentation relevant to the objection to the ACHP, including NTC's proposed response to the objection, with the expectation that the ACHP will, within thirty (30) days after receipt of such documentation:

a. advise NTC that the ACHP concurs with NTC's proposed response to the objection, whereupon NTC will respond to the objection accordingly; or

- b. provide NTC with recommendations, which NTC will take into account in reaching a final decision regarding its response to the objection; or
 - c. notify NTC that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4), and proceed to refer the objection and comment. NTC shall take the resulting comments into account in accordance with 36 CFR 800.7(c)(4) and Section 110(1) of the NHPA.
2. Should the ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, NTC may assume the ACHP's concurrence in its proposed response to the objection.
 3. NTC shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection. NTC's responsibility to carry out all other actions under this PA that are not the subject of the objection will remain unchanged.
 4. NTC shall provide the SHPO, other consulting parties, and the ACHP, when the ACHP has issued comments hereunder, with a copy of its final written decision regarding any objection addressed pursuant to this stipulation.
 5. NTC may authorize any action subject to objection under section E. of this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

F. Public Objections

1. At any time during implementation of the measures stipulated in this PA, should an objection pertaining to such implementation be raised by an organization or member of the public that may have concerns about the Undertaking's effects on historic properties, NTC shall notify the SHPO, and other consulting parties, in writing of the objection and take the objection into consideration. NTC shall consult with the objecting party and, if the objecting party so requests, with the SHPO for no more than 30 days. Within 10 days following closure of this consultation period, NTC will render a decision regarding the objection and notify the consulting parties of its decision in writing. In reaching its decision, NTC will take into account any comments from the consulting parties regarding the objection, including the objecting party. NTC's decision regarding the resolution of the objection will be final.
2. NTC may authorize any action subject to objection under section F. of this stipulation to proceed after the objection has been resolved in accordance with the terms of this stipulation.

G. Amendments

1. Either signatory may propose that this PA be amended, whereupon the signatories will consult for no more than 60 days to consider such amendment. The amendment process shall comply with 36 CFR §§ 800.6(c)(1) and 800.6(c)(7). This PA may be amended only upon the written agreement of the signatory parties. If it is not amended, this PA may be terminated by either signatory party in accordance with Stipulation X.H.
2. Attachments to this PA may be amended through consultation among NTC, the SHPO, and participating Indian Tribes, without amending the PA proper.

H. Termination

1. If this PA is not amended as provided for in Section G of this stipulation, or if either signatory party proposes termination of this PA for other reasons, the signatory party proposing termination shall in writing notify the other signatory party, explain the reasons for proposing termination, and consult with the other signatory party for no more than 60 days to seek alternatives to termination. Such consultation shall not be required if NTC 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 on an alternative to termination, then, the signatory parties shall proceed in accordance with the terms of that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this PA by promptly notifying the other signatory party. Termination hereunder shall render this PA without further force or effect.
4. If this PA is terminated hereunder, and if NTC determines that the Undertaking will nonetheless proceed, then NTC shall either consult in accordance with 36 CFR § 800.6 to develop a new agreement document or request the comments of the ACHP pursuant to 36 CFR Part 800.

XI. ANTI-DEFICIENCY ACT COMPLIANCE

The Army's compliance with this PA is subject to the availability of appropriated funds and the provisions of the Anti-Deficiency Act, 31 USC 1341. If availability of funds and compliance with the Anti-Deficiency Act impair the Army's ability to perform under this PA, then NTC will consult in accordance with Stipulation X.G. Nothing in this stipulation shall be construed as a constraint on the right of the SHPO to terminate the present PA should the Army, for any reason, fail to fully implement this PA.

XII. DURATION OF THE PA

Unless terminated pursuant to stipulation X.H., this PA, and any amendment thereto or any amended PA that is executed for the Undertaking, shall remain in effect for 3 years following execution of this PA by the signatory parties. Thereafter, this PA, any amendment thereto or amended PA executed for the Undertaking, shall automatically terminate and have no further force or effect.

XIII. REPLACEMENT OF THIS PA, THE MOA AND THE AMOA

1. Within one year following execution of this PA, the NTC and the SHPO shall begin consultation pursuant to 36 CFR § 800.6 and § 800.14(b)(3) to develop and execute a Programmatic Agreement that will stipulate the manner in which NTC shall take into account the effects on historic properties of the NTC mission as a whole and evidence NTC compliance for that mission with Section 106 of the NHPA and 36 CFR Part 800. Upon execution, the Programmatic Agreement herein prescribed shall supersede, and render without further force or effect, this PA, the MOA and the AMOA.

2. If the Programmatic Agreement prescribed by Section 1, above, of this stipulation has not been executed within 3 years following execution of this PA, this PA, the MOA and the AMOA shall automatically terminate and have no further force or effect. In that event, NTC shall comply with subpart B of 36 CFR Part 800 for all individual undertakings at NTC.

XIV. ADVISORY COUNCIL ON HISTORIC PRESERVATION

A signed copy of this PA shall be filed with the Advisory Council on Historic Preservation.

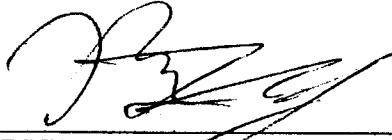
XV. EFFECTIVE DATE

This PA shall take effect on the date that it has been executed by NTC and the SHPO.

EXECUTION of this PA by the NTC and the SHPO, its transmittal by NTC to the ACHP in accordance with 36 CFR § 800.6(b)(1)(iv), and subsequent implementation of its terms, shall evidence, pursuant to 36 CFR § 800.6(c), that this PA is an agreement with the ACHP for purposes of Section 110(l) of the NHPA, and shall further evidence that NTC has afforded the ACHP an opportunity to comment on the Undertaking and its effects on historic properties, and that NTC has taken into account the effects of the Undertaking on historic properties.

SIGNATORY PARTIES

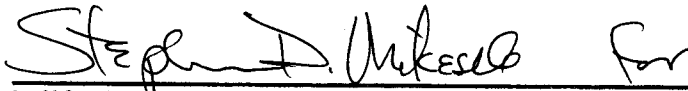
DEPARTMENT OF THE ARMY:



RICHARD L. SOBRATO, JR
LTC, AR
GARRISON COMMANDER

Date: MAY 31 2005

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER:



Milford Wayne Donaldson, FAIA
California State Historic Preservation Officer

Date: 7/5/05