



Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of

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10/06/2005
8:00:00

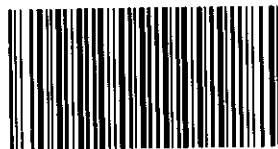
Stewart Title

RECORDING REQUESTED BY:

FORT ORD REUSE AUTHORITY
100 12th Street, Building 2880
Marina, CA 93933
ATTN: MICHAEL A. HOULEMARD, JR.

DOCUMENT: **2005106588**

Titles: 1/ Pages: 27



Fees....
Taxes...
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ORIGINAL
**Fort Ord
Reuse Authority**

(Space Above This Line For Recorder's Use Only)

**MEMORANDUM OF AGREEMENT
REGARDING ENDANGERED SPECIES ACT ENFORCEMENT OF
DEVELOPMENT RESTRICTIONS ON THE EAST GARRISON
PORTIONS OF THE FORMER FORT ORD, CALIFORNIA**

This Memorandum of Agreement Regarding Endangered Species Act Enforcement of Development Restrictions on the East Garrison Portion of the Former Fort Ord, California ("Agreement") is made and entered into among the **FORT ORD REUSE AUTHORITY** ("FORA"), **COUNTY OF MONTEREY, CALIFORNIA** ("County"), **REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY** ("Agency"), and **EAST GARRISON PARTNERS I, LLC** ("East Garrison Partners") (hereinafter referred to collectively as the "Parties").

WITNESSETH THAT:

WHEREAS, FORA, created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, is a regional agency established under Government Code Section 67650 to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (hereinafter referred to as the "Army") to the governing local jurisdictions or their designee(s). FORA has been designated as the Local Redevelopment Authority for the former Fort Ord Military Installation located in Monterey, California ("Former Fort Ord"), by the Office of Economic Adjustment on behalf of the Secretary of Defense;

WHEREAS, FORA will acquire portions of the Former Fort Ord from the United States of America, through the Secretary of the Army ("Army"), under the *Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United*

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ESA MOA - EAST GARRISON PORTION OF THE FORMER FORT ORD

States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the Former Fort Ord, California, dated the 20th day of June 2000, and *Amendment No. 1*, dated the 23rd day of October 2001 (collectively "MOA"), which sets forth the specific terms and conditions of the sale of portions of the Former Fort Ord;

WHEREAS, pursuant to the MOA the Army intends to convey to FORA by quitclaim deed a portion of the Former Fort Ord along with improvements thereon ("FORA Property");

WHEREAS, upon transfer of the FORA Property from the Army, FORA intends to execute a quitclaim deed transferring the FORA Property to the Agency, which has entered into an option agreement with East Garrison Partners and intends to transfer to East Garrison Partners the following portions of the FORA Property, which are the subject of this Agreement: Parcels E11b.1, E11b.2, E11b.3, E11b.4, L20.10.1.2, L20.10.2, L20.14.1.2, L20.19.2, L20.20, L20.21.1, L20.21.2, L20.22, L23.3.1, L23.3.2.1, L35.3, L35.6, L35.7, L35.8, totaling approximately 244 acres, more or less, as more particularly described and depicted in Exhibit "A" ("Developer Property");

WHEREAS, the County, a political subdivision of the State of California, has jurisdiction over the Developer Property and the authority to approve and impose conditions on any development of the Developer Property, and the authority to enforce those conditions pursuant to its police powers;

WHEREAS, East Garrison Partners is seeking approvals and related actions from the County to allow it to develop the Developer Property;

WHEREAS, closure, disposal and reuse of Former Fort Ord requires consultation between the Army and the U.S. Fish and Wildlife Service ("Service") under Section 7 of the federal Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.*, because the Army's actions regarding closure, disposal and reuse of Former Fort Ord potentially affect several species listed as threatened or endangered or proposed for listing under the ESA. As a result of prior Section 7 consultations, the Service issued a biological opinion on October 19, 1993, and subsequent biological and conference opinions on January 31, 1997, April 11, 1997 and March 30, 1999 which concluded the Army's actions are not likely to jeopardize the continued existence of any listed species or species proposed for listing under the ESA. A key component of the Army's proposed action was the development and implementation of a habitat management plan to minimize incidental take of listed species and their habitats and to mitigate impacts to vegetation and wildlife resources resulting from the Army's actions. In the 1993 biological opinion, the Service recommended that the Army consider all proposed and candidate species for federal listing and other special-status species in the habitat management plan;

WHEREAS, the Army developed an Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California, dated December 1994, as revised and amended by the "*Installation-Wide Multispecies Habitat Management Plan for Former Fort*

ESA MOA - EAST GARRISON PORTION OF THE FORMER FORT ORD

Ord, California" dated April 1997 ("HMP"), to assure that disposal and reuse of Former Fort Ord lands is in compliance with the ESA;

WHEREAS, the Army developed the HMP with input from federal, state, and local agencies and organizations concerned with the natural resources and reuse of Former Fort Ord. The Service, the Bureau of Land Management ("BLM"), California Department of Fish and Game ("CDFG"), the California Department of Parks and Recreation ("State Parks"), the University of California, FORA and other members of the local Monterey Bay area community were all active participants in the development of the HMP.

WHEREAS, the HMP establishes land use categories and habitat management requirements for all lands on the Former Fort Ord. Developable lands and habitat reserve areas are defined along with habitat corridors and restricted development areas. Resource conservation and management requirements are described and responsible parties for each designated habitat area on the Former Fort Ord are identified.

WHEREAS, on August 4, 2004, the Service listed the California Tiger Salamander ("CTS") as a threatened species under the ESA and, on August 10, 2004, proposed to designate as critical habitat portions of the Former Fort Ord. Pursuant to 50 C.F.R. 402.16(d) the Army was required to reinitiate consultation to insure that its actions with regard to the disposal and reuse of Former Fort Ord lands are not likely to jeopardize the continued existence of the CTS. At the conclusion of the reinitiated consultation the Service issued a biological opinion ("2004 CTS biological opinion") that concludes that the Army's proposed action will not result in jeopardy to the CTS. The Service also issued an incidental take statement ("CTS ITS") allowing take of CTS in accordance with the terms and conditions of the CTS ITS. The CTS ITS contemplates actions by the Parties to convey, permit the development of, and develop the Developer Property, and will provide the Parties an exemption from the "take" prohibitions of the ESA if they comply with the requirements of the CTS ITS, including the execution, recordation and implementation of this Agreement.

WHEREAS, FORA along with other state and local agencies is developing a Habitat Conservation Plan ("HCP") under Section 10(a)(1)(B) of the ESA. The HCP is intended to address conservation and development of Former Fort Ord lands transferred by the Army under the Former Fort Ord disposal and reuse process in a manner consistent with the HMP, including protection of the CTS. The HCP will, in the case of non-federal recipients of Former Fort Ord lands, support the issuance of incidental take permits from the Service under Section 10(a)(1)(B) of the ESA and from the CDFG under Section 2081 of the California Fish and Game Code in compliance with the California Endangered Species Act ("CESA").

WHEREAS, the Service has identified several Development Restrictions ("Restrictions") attached hereto as Exhibit "B" and incorporated herein by this reference that must be incorporated into any future development of the Developer Property to ensure that such development is carried out in a manner consistent with the HMP, CTS ITS, and the future HCP,

ESA MOA - EAST GARRISON PORTION OF THE FORMER FORT ORD

and in accordance with the ESA. The Restrictions are intended to incorporate the terms and conditions of the HMP and CTS ITS and increase consistency with the future HCP.

WHEREAS, the Parties enter into this Agreement to ensure that the Restrictions are fully implemented as part of any future development of the Developer Property and requested the Army to submit the terms and conditions of this Agreement to the Service as part of the reinitiated consultation to demonstrate the Parties' commitment to condition, enforce and implement development of the Developer Property in a manner consistent with the HMP, the CTS ITS, and future HCP and in compliance with the ESA, and to provide the Parties assurance that their actions in accordance with the Restrictions will be exempt from the "take" prohibitions of the ESA.

WHEREAS, the Parties acknowledge the unique circumstances surrounding the Army's disposal of the Developer Property and, in particular, the need for expeditious transfer of the Developer Property to enable the County to meet its commitments to early redevelopment of the Developer Property in advance of completion of the Former Fort Ord HCP and issuance of incidental take permits to one or more of the Parties based thereon. The Parties further acknowledge the continuing authority and commitment of the United States to enforce the HMP, as refined by the Restrictions, with regard to the Developer Property. The Parties acknowledge that, as provided in the HMP, future disposals of land by the Army at the Former Fort Ord, including any future Section 7 consultations with the Army on such land disposals, will not include any authorization under the ESA of take of listed species incidental to post disposal reuse of the lands unless such authorization occurs through issuance of incidental take permits associated with an approved Former Fort Ord HCP or other approved HCP or through post disposal individual Section 7 consultations where an independent federal nexus is present.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Parties agree as follows:

I. OBLIGATIONS OF THE PARTIES

A. FORA

1. In order to render FORA exempt under the CTS ITS from the prohibitions against "take" of CTS under the ESA resulting from FORA's ownership and transfer of the Developer Property, FORA must 1) incorporate the Restrictions identified in Exhibit "B" in any deed or other document conveying an interest in the Developer Property to the Agency, the County, East Garrison Partners, or any third party; 2) record this Agreement, together with all referenced exhibits, in the Office of the County Recorder, County of Monterey within (10) days of FORA's receipt of a fully executed original and prior to any transfer of the Developer Property from FORA and; 3) fully implement each of the Restrictions, if any, assigned to it under this Agreement and/or under a future approved HCP ("HCP Requirements") applicable to the Developer Property.

ESA MOA - EAST GARRISON PORTION OF THE FORMER FORT ORD

B. County

In order to render the County exempt under the CTS ITS from the prohibitions against “take” of CTS under the ESA resulting from approval of development activities on the Developer Property, the County must include the Restrictions identified in Exhibit “B” as enforceable conditions of development in any development permit, agreement or other development approval issued by the County to East Garrison Partners, its successors or assigns, or to any third party (hereafter collectively “East Garrison Developer”) for development of the Developer Property. The County shall provide notice in any such development approval that upon approval by the Service of an HCP covering the Developer Property, the HCP Requirements, to the extent feasible and appropriate, as determined by the County and the Service in consultation with the East Garrison Developer, and the authorization for “take” provided by associated Incidental Take Permits (“ITP”), shall apply in lieu of the Restrictions and the CTS ITS. The County shall, in the exercise of its police power, fully enforce the Restrictions and/or HCP Requirements, as applicable, against the East Garrison Developer, its successors and assigns and fully implement each of the Restrictions, if any, assigned to it under this Agreement and/or HCP Requirements with regard to the Developer Property.

C. East Garrison Partners

In order to render East Garrison Partners exempt under the CTS ITS from the prohibitions against “take” of CTS under the ESA arising from its development of the Developer Property, should any interest in the Developer Property be transferred to East Garrison Partners, East Garrison Partners, its successors and assigns, must fully implement applicable Restrictions and/or HCP Requirements in connection with any future development of the Developer Property.

D. Agency

1. In order to render the Agency exempt under the CTS ITS from the prohibitions against “take” of CTS under the ESA resulting from the Agency’s ownership and transfer of the Developer property, the Agency must 1) incorporate the Restrictions identified in Exhibit “B” in any deed or other document conveying an interest in the Developer Property to the County, East Garrison Partners, or any third party and; 2) fully implement each of the Restrictions, if any, assigned to it under this Agreement and/or under a future approved HCP (“HCP Requirements”) applicable to the Developer Property.

II. TAKE AUTHORIZATION

A. The Parties acknowledge that the exemption from the prohibition against “take” under Section 9 of the ESA provided pursuant to Section 7(o) of the ESA and 50 C.F.R. 402.14(i) through the CTS ITS accompanying the 2004 CTS biological opinion shall become effective as to the Parties upon recordation of this Agreement in the Office of the Recorder, County of Monterey, following its execution by all of the Parties.

ESA MOA - EAST GARRISON PORTION OF THE FORMER FORT ORD

B. The Parties further acknowledge that the exemption from the prohibition against “take” under Section 9 of the ESA provided to the Parties through the CTS ITS accompanying the 2004 CTS biological opinion shall remain in effect so long as the Restrictions are fully implemented as required by 50 C.F.R. 402.14(i)(5) and as set forth in this Agreement. The Parties further acknowledge that any future amendment of this Agreement to alter the Restrictions without the prior written consent of the Service shall automatically terminate the exemption from take provided through the CTS ITS accompanying the 2004 CTS biological opinion.

C. The Parties acknowledge and agree that upon approval of the HCP and issuance of associated ITPs to FORA and the County, the HCP Requirements shall, to the extent provided in Section I.B of this Agreement, apply to the Parties with regard to the Developer Property in lieu of the Restrictions, and the authorization for take provided in the ITPs shall apply to the Parties with regard to the Developer Property in lieu of the take exemption provided in the CTS ITS.

D. In addition to any liability under Section 9 of the ESA, the failure by any Party to comply with its specific obligations regarding the Restrictions, shall subject such Party to civil and criminal penalties under Section 11 of the ESA to the extent such failure constitutes a violation of the ESA.

III. FUTURE PARTIES AND SUCCESSORS AND ASSIGNS

A. Should the Developer Property be transferred by FORA, the County or the Agency to a third party other than East Garrison Partners, the remaining Parties shall amend this Agreement to substitute such third party in place of East Garrison Partners prior to such transfer of any interest in the Developer Property to such third party. FORA shall record the amended Agreement in the Office of the Recorder, County of Monterey, within ten (10) days of FORA’s receipt of a fully executed original amended Agreement. The exemption from the prohibition against “take” provided to the Parties through the CTS ITS accompanying the 2004 CTS biological opinion shall not become effective as to any such third party until and unless this Agreement is amended to include such third party as a signatory and the amended Agreement is so recorded. The failure of the Parties to amend the Agreement to include any such third party and to execute and record the amended Agreement in accordance with this paragraph shall have the effect of automatically terminating the exemption from the prohibitions against take provided to each Party under the CTS ITS. FORA shall provide written notice to the Service of any amendment to this Agreement under this paragraph, along with a copy of the amended Agreement, within 30 days of its recordation.

B. This Agreement and each of its covenants and conditions shall be binding on, and inure to the benefit of the Parties and any of their respective successors and assigns involved in the development of the Developer Property, or any portion thereof, provided that the exemption from the prohibitions against “take” of CTS provided through the CTS ITS accompanying the

ESA MOA - EAST GARRISON PORTION OF THE FORMER FORT ORD

2004 CTS biological opinion, and/or ITPs associated with the HCP, shall remain effective as to the Parties and such successors or assigns subject to their compliance with the Restrictions and/or HCP requirements as provided in Section I.B of this Agreement and their compliance with the procedural requirements of Section III.A of this Agreement.

IV. NOTICE

Formal notices, demands, and communications among the Parties shall not be deemed given unless sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt or facsimile, to the principal office of the Parties as follows:

Fort Ord Reuse Authority:

ATTN: Michael A. Houlemard, Jr.,
Executive Officer
100 12th Street, Bldg. 2880
Marina, California 93933

County of Monterey, California:

ATTN: Chief Administrative Officer
230 Church Street, Bldg 3,
Salinas, CA 93901

Redevelopment Agency of the County of Monterey

ATTN: Chief Administrative Officer
230 Church Street, Bldg 3,
Salinas, CA 93901

East Garrison Partners I, LLC

c/o Woodman Development Company, LLC
24571 Silver Cloud Court, Suite 101
Monterey, California 93940

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

In addition, a copy of all notices under this Agreement shall be contemporaneously provided to the Service at the following address:

United States Department of the Interior
Fish and Wildlife Service
Ventura Fish and Wildlife Office

ESA MOA - EAST GARRISON PORTION OF THE FORMER FORT ORD

2493 Portola Road, Suite B
Ventura, California 93003

VIII. LIST OF EXHIBITS

The following listed Exhibits are made a part of this Agreement:

- Exhibit A: Description of Developer Property
- Exhibit B: Restrictions on Developer Property

[Signatures pages follow]

Exhibit "A"

JUNE 29, 2005
JOB NO.: 1208-00

**LEGAL DESCRIPTION
BEING A PORTION OF THE EAST GARRISON
OF FORT ORD MILITARY RESERVATION
MONTEREY COUNTY, CALIFORNIA**

CERTAIN REAL PROPERTY SITUATE IN MONTEREY CITY LANDS TRACT NO. 1, COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY RECORDED JUNE 26, 2000, IN VOLUME 23 OF SURVEYS AT PAGE 104, IN THE OFFICE OF THE COUNTY RECORDER OF MONTEREY COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERN LINE OF SAID PARCEL 1, SAID POINT BEING THE SOUTHEASTERN TERMINUS OF THAT CERTAIN COURSE DESIGNATED AS "(SOUTH 57°53'16" EAST) (1,442.38 FEET)" ON SAID RECORD OF SURVEY:

THENCE, FROM SAID POINT OF BEGINNING, ALONG SAID NORTHEASTERN LINE AND SOUTHEASTERN LINE OF SAID PARCEL 1, THE FOLLOWING NINE (9) COURSES:

- 1) NORTH 86°10'27" EAST 647.59 FEET,
- 2) SOUTH 50°06'58" EAST 317.97 FEET,
- 3) SOUTH 74°46'08" EAST 287.64 FEET,
- 4) SOUTH 58°35'42" EAST 324.17 FEET,
- 5) SOUTH 40°05'11" EAST 697.82 FEET,
- 6) SOUTH 27°33'51" EAST 478.75 FEET,
- 7) SOUTH 09°43'24" EAST 277.22 FEET,
- 8) SOUTH 38°47'16" WEST 464.82 FEET AND
- 9) SOUTH 36°27'16" WEST 553.37 FEET;

THENCE, LEAVING SAID SOUTHEASTERN LINE, SOUTH 73°07'44" WEST 50.80 FEET;

THENCE, NORTH 08°08'06" EAST 62.52 FEET;

THENCE, NORTH 05°15'27" WEST 94.71 FEET;

THENCE, ALONG THE ARC OF A TANGENT 115.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 73°21'05", AN ARC DISTANCE OF 147.23 FEET;

LEGAL DESCRIPTION

PAGE 2 OF 5

JUNE 29, 2005
JOB NO.: 1208-00

THENCE, NORTH 78°36'32" WEST 632.84 FEET;

THENCE, SOUTH 86°20'31" WEST 521.93 FEET;

THENCE, ALONG THE ARC OF A TANGENT 150.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 71°15'51", AN ARC DISTANCE OF 186.57 FEET;

THENCE, NORTH 22°23'38" WEST 71.92 FEET TO A POINT ON THE WESTERN LINE OF PARCEL 17, AS SAID PARCEL 17 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY, RECORDED JANUARY 31, 1997, IN VOLUME 20 OF SURVEY MAPS AT PAGE 110, IN SAID OFFICE OF THE COUNTY RECORDER OF MONTEREY COUNTY;

THENCE, ALONG SAID WESTERN LINE, THE FOLLOWING THREE (3) COURSES:

- 1) ALONG THE ARC OF NON-TANGENT 230.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 54°30'22" EAST, THROUGH A CENTRAL ANGLE OF 10°28'32", AN ARC DISTANCE OF 42.05 FEET,
- 2) NORTH 45°58'10" EAST 276.86 FEET, AND
- 3) ALONG THE ARC OF A TANGENT 970.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 00°32'15", AN ARC DISTANCE OF 9.10 FEET TO A POINT ON THE SOUTHERN LINE OF PARCEL 11, AS SAID PARCEL 11 IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (20 SURVEYS 110);

THENCE, ALONG SAID SOUTHERN LINE AND WESTERN AND NORTHERN LINES OF SAID PARCEL 11 (20 SURVEYS 110) THE FOLLOWING SEVENTEEN (17) COURSES:

- 1) NORTH 47°43'00" WEST 58.68 FEET,
- 2) ALONG THE ARC OF A TANGENT 45.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE 38°38'00", AN ARC DISTANCE OF 30.34 FEET,
- 3) ALONG THE ARC OF A COMPOUND 570.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 03°39'00" WEST, THROUGH A CENTRAL ANGLE OF 14°16'00", AN ARC DISTANCE OF 141.93 FEET,

LEGAL DESCRIPTION

PAGE 3 OF 5

JUNE 29, 2005
JOB NO.: 1208-00

- 4) ALONG THE ARC OF A REVERSE 580.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 10°37'00" WEST, THROUGH A CENTRAL ANGLE OF 19°59'30", AN ARC DISTANCE OF 202.37 FEET,
- 5) ALONG THE ARC OF A REVERSE 1,220.00 FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 09°22'30" WEST, THROUGH A CENTRAL ANGLE OF 03°42'40", AN ARC DISTANCE OF 79.02 FEET,
- 6) NORTH 84°20'10" WEST 842.92 FEET,
- 7) ALONG THE ARC A TANGENT 1,970.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 08°42'50", AN ARC DISTANCE OF 299.61 FEET,
- 8) SOUTH 86°57'00" WEST 212.93 FEET,
- 9) ALONG THE ARC OF A TANGENT 355.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 29°19'10", AN ARC DISTANCE OF 181.66 FEET,
- 10) NORTH 63°43'50" WEST 166.36 FEET,
- 11) ALONG THE ARC OF A TANGENT 320.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 44°56'30", AN ARC DISTANCE OF 251.00 FEET,
- 12) ALONG THE ARC OF A REVERSE 1,030.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 18°40'20" WEST, THROUGH A CENTRAL ANGLE OF 06°03'10", AN ARC DISTANCE OF 108.81 FEET,
- 13) SOUTH 77°22'50" WEST 292.82 FEET,
- 14) ALONG THE ARC OF A TANGENT 370.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 09°50'40", AN ARC DISTANCE OF 63.57 FEET,
- 15) ALONG THE ARC OF A REVERSE 445.00 FOOT RADIUS CURVE TO THE RIGHT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 22°27'50" WEST, THROUGH A CENTRAL ANGLE OF 33°08'00", AN ARC DISTANCE OF 257.34 FEET,
- 16) NORTH 10°40'10" EAST 60.00 FEET, AND

LEGAL DESCRIPTION

PAGE 4 OF 5

JUNE 29, 2005
JOB NO.: 1208-00

- 17) ALONG THE ARC OF A NON-TANGENT 385.00 FOOT RADIUS CURVE THE LEFT, FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH $10^{\circ}40'10''$ EAST, THROUGH A CENTRAL ANGLE OF $13^{\circ}57'59''$, AN ARC DISTANCE OF 93.85 FEET TO A POINT ON THE WESTERN LINE OF SAID PARCEL 12, AS SAID PARCEL 12 IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (20 SURVEYS 110);

THENCE, ALONG SAID WESTERN LINE, THE FOLLOWING ELEVEN (11) COURSES:

- 1) NORTH $05^{\circ}46'10''$ WEST 243.25 FEET,
- 2) ALONG THE ARC OF A TANGENT 530.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $06^{\circ}12'50''$, AN ARC DISTANCE OF 57.48 FEET,
- 3) NORTH $00^{\circ}26'40''$ EAST 123.80 FEET,
- 4) ALONG THE ARC OF A TANGENT 5,030.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $00^{\circ}40'40''$, AN ARC DISTANCE OF 59.50 FEET,
- 5) NORTH $01^{\circ}07'20''$ EAST 371.18 FEET,
- 6) ALONG THE ARC OF A TANGENT 90.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $53^{\circ}27'20''$, AN ARC DISTANCE OF 83.97 FEET,
- 7) NORTH $52^{\circ}20'00''$ WEST 57.65 FEET,
- 8) ALONG THE ARC OF A TANGENT 140.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $82^{\circ}47'00''$, AN ARC DISTANCE OF 202.28 FEET,
- 9) NORTH $30^{\circ}27'00''$ EAST 134.37 FEET,
- 10) ALONG THE ARC OF A TANGENT 170.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $89^{\circ}07'10''$, AN ARC DISTANCE OF 264.42 FEET, AND

- 11) NORTH 58°40'10" WEST 70.02 FEET TO A POINT ON THE SOUTHERN LINE OF PARCEL 10, AS SAID PARCEL 10 IS SHOWN AND SO DESIGNATED ON SAID RECORD OF SURVEY (20 SURVEYS 110);

THENCE, ALONG SAID SOUTHERN LINE, NORTH 85°01'10" WEST 480.03 FEET;

THENCE, LEAVING SAID SOUTHERN LINE, NORTH 32°14'08" EAST 1,772.68 FEET TO A POINT ON SAID NORTHEASTERN LINE OF PARCEL 1 (23 SURVEYS 104);

THENCE, ALONG SAID NORTHEASTERN LINE, THE FOLLOWING SEVEN (7) COURSES:

- 1) SOUTH 57°45'52" EAST 40.03 FEET,
- 2) NORTH 00°40'37" WEST 73.68 FEET,
- 3) SOUTH 56°04'56" EAST 225.68 FEET,
- 4) SOUTH 36°20'16" EAST 39.45 FEET,
- 5) SOUTH 57°36'50" EAST 1,135.76 FEET,
- 6) SOUTH 21°35'29" WEST 41.64 FEET, AND
- 7) SOUTH 57°53'16" EAST 1442.38 FEET TO SAID POINT OF BEGINNING.

CONTAINING 244.43 ACRES MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

EXHIBIT B

East Garrison Development Restrictions:
Parcels E11b.1, E11b.2, E11b.3, E11b.4, L20.10.1.2,
L20.10.2, L20.14.1.2, L20.19.2, L20.20, L20.21.1, L20.21.2, L20.22,
L23.3.1, L23.3.2.1, L35.3, L35.6, L35.7, L35.8 ("Developer Property")

The restrictions contained in this Exhibit B ("Restrictions") to the Memorandum of Agreement Regarding Endangered Species Act Enforcement of Development Restrictions on the East Garrison Portions of the Former Fort Ord ("Agreement") shall be fully funded, implemented, enforced, and managed as appropriate, by the party or parties designated as the Responsible Party ("RP") for the specific requirements herein.

A. DEFINITIONS

The following definitions apply to this Exhibit B:

1. **Borderland.** Parcels within the Developer Property, which border the Conserved Habitat Areas on the former Fort Ord as delineated in Attachment 1 of this Exhibit B.
2. **Conserved Habitat Areas.** The portion of the former Fort Ord as delineated in Attachment 1 to this Exhibit B.
3. **Project Site.** The portion of the Developer Property on which project development activities are being conducted by the Developer including surveying, demolition, clearing, grading, excavation, and construction.
4. **Service-Approved Biologist.** A person approved by the U.S. Fish and Wildlife Service ("Service") under a biological opinion covering activities on the Developer Property, or other written approval document, to perform the activities as required in this Exhibit B. To identify a Service-Approved Biologist, the Developer shall submit, to the Service, the credentials of the biologist who they wish to conduct the work. These should be provided for the Service's review and written approval at least 30 days prior to the planned onset of any such activities.
5. **Covered Species.** Those species addressed in the Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California, dated December 1994, as revised and amended by the "*Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California*" dated April 1997 ("HMP").

B. GENERAL PROJECT DEVELOPMENT REQUIREMENTS

1. **Salvage Program (RP: East Garrison Developer as defined in the Agreement and hereinafter referred to as "Developer").**

The Developer shall have a Service-Approved Biologist develop, and shall implement, a plan to salvage adult and juvenile California tiger salamanders from Project Sites via drift fence and pitfall trap captures prior to grading. The purpose of the capture shall be to both minimize mortality of adult California tiger salamanders on Project Sites and to provide information on the level of upland habitat use in the area to promote more effective conservation of the species in adjacent Conserved Habitat Areas.

The salvage plan shall be approved in writing by the Service and shall include at least the following: (1) salvaging shall be via drift fence and pitfall trap captures along a sufficient amount of a Project Site boundary to intercept the majority of the adult population migrating to or from known and potential breeding ponds in the year the captures take place; (2) drift fence installation shall be timed to capture individuals migrating to and from breeding areas, if possible; (3) identification of appropriate areas where captured California tiger salamanders shall be released. If grading and construction on a Project Site(s) within the Developer Property are expected in 2005, a plan shall be developed and drift fences installed by January 15, 2005, or as agreed to by the Service to capture and repel adults returning from breeding ponds.

Only a Service-Approved Biologist may capture and handle California tiger salamanders. Before project activities begin, a Service-Approved Biologist must identify appropriate areas to receive relocated California tiger salamanders. These areas must be outside the Developer Property boundaries in a designated Conserved Habitat Area, in proximity to the capture site, and support suitable vegetation for the California tiger salamander. The Service-Approved Biologist must maintain detailed records of any California tiger salamanders that are moved (e.g., size, coloration, any distinguishing features, photographs [digital preferred]) to assist him or her in determining whether translocated animals are returning to the original point of capture.

2. Water Features (RP: Developer). Any storm water detention basins or other water features created on the property shall be designed to avoid attracting breeding California tiger salamanders (e.g. encircled with a low wall or curb). A Service-approved strategy shall be developed and implemented to ensure that water features do not become a source for nonnative species, such as bullfrogs, which could move into nearby Conserved Habitat Areas.

3. Construction Personnel Training (RP: Developer). Before grading or construction work begins on a Project Site, a Service-Approved Biologist shall conduct a training session for all construction personnel who may be working on the Project Site. At a minimum, the training shall include a description of the California tiger salamander and its habitat, the specific measures that are being implemented to conserve it, and the boundaries of the project site.

4. Demarcation of Project Site Boundary (RP: Developer). Project Site boundaries shall be clearly demarcated by construction fencing or other materials to ensure that grading and the staging of equipment or supplies do not exceed the Project Site boundaries.

5. **Trash and Pets (RP: Developer)**. During project construction activities, all trash that may attract predators shall be properly contained and removed from the work site. Pets shall not be permitted at the Project Site.

6. **Discovery During Construction (RP: Developer)**. During project construction activities, any California tiger salamanders that are discovered shall be recorded and measured by a Service-Approved Biologist. If alive, the California tiger salamander(s) shall be relocated to the appropriate pre-determined area outside the Developer Property boundaries.

7. **Reporting (RP: Developer)**. The Developer shall report the results of its salvage operations (e.g., number, size, condition, location, and dates of capture and release of individual California tiger salamanders; problems encountered during capture, handling, or release) to the Service upon completion of each salvage operation conducted on a Project Site. Developer shall report on Developer's compliance with these Restrictions within 90 days of the completion of all planned development on the Developer Property.

C. **BORDERLAND MANAGEMENT**

The designated RP(s), as set forth below, shall be responsible for funding and implementation of all long-term Borderland management requirements. Long-term Borderland management addresses construction and management of development to minimize impacts of Borderland development on adjacent Conserved Habitat Areas. Long-term management requirements for Borderland parcels are described below. Wherever Developer is referred to in this Section C, it shall include its successors and assigns, Community Service Districts, Homeowners Associations, and other responsible entities, created to carry out Developer responsibilities in this Section C.

1. **Borderland Management Plan (RP: Fort Ord Reuse Authority ("FORA"))**.

OBJECTIVE: To provide a greater level of detail about environmental conditions, project impacts, and site-specific management actions

FORA shall develop a Borderland Management Plan, which shall include the following:

a. Specific Action: Describe existing environmental conditions within the Borderland, including habitat types, hydrological resources, topography, and fuel loads.

b. Specific Action: Describe procedures for controlling non-native invasive plants and exotic animals within the Borderland.

c. Specific Action: Describe long-term development plans for the Borderland.

d. Specific Action: Describe how firewise planning is incorporated into development plans for the Borderland and encouraged within Borderland management activities.

e. Specific Action: Describe how development plans incorporate the long-term management activities discussed in Section C.2 of these Restriction consistent with the objectives and requirements of these Restrictions.

2. Long Term Management Activities (RP: as designated).

a. Access Control.

OBJECTIVE: To direct public access from the Borderland to Conserved Habitat Areas in a manner that promotes the enjoyment, appreciation, and conservation of the species and ecosystems of former Fort Ord.

i. Specific Action: Coordinate with the adjacent Conserved Habitat Area manager to identify levels and locations of public and other access from the Borderland into Conserved Habitat Areas. **RP: Developer.**

ii. Specific Action: Except for roads that are managed for public access, secure any points of entry that could be used by motorized vehicles from the Borderland into Conserved Habitat Areas with either a gate or a vehicle barrier. **RP: Developer**

iii. Specific Action: Where fencing is utilized along the perimeter of a Conserved Habitat Area, gates shall be installed at appropriate points in the barrier between the Conserved Habitat Area and the Borderland to allow for emergency access. The managing agency, the Developer, and other appropriate agencies shall be provided keys to the gates. **RP: Developer**

iv. Specific Action: Trails extending from the boundary of the Borderland into the Conserved Habitat Area that are officially closed to public use, as determined by the Service and/or the California Department of Fish & Game ("CDFG"), shall be made inaccessible through the use of "Trail Closed" signs, brush piles, or fencing at appropriate points along the boundary of the Borderland. **RP: Developer**

v. Specific Action: Maintain regular security patrols to help control pedestrian, pet, bicycle, and motorized vehicle trespass from the Borderland onto Conserved Habitat Area. **RP: FORA**

vi. Where pedestrian access is permitted from the Borderland onto the Conserved Habitat Area, as determined by the RP in cooperation with the Service and the CDFG, install interpretive signs/displays that describe the importance of the Conserved Habitat Area and methods for maintaining values such as trash removal, limiting ground disturbance, restraining pets, discouraging capture or harassment of wildlife, and prohibiting the collection of Covered Species. **RP: Developer**

b. Non-native Species Control.

All invasive non-native plant species shall be managed within the Borderlands to prevent their spread into the adjacent Conserved Habitat Area.

OBJECTIVE: Control populations of non-native or feral animals and plants to prevent the spread of these populations into the adjacent Conserved Habitat Area.

i. Specific Action: Prohibit establishment of feeding stations for feral animals on the Borderland. **RP: Developer**

ii. Specific Action: Control invasive plants such as ice plant, scotch broom, and pampas grass that may be present on the Borderland to prevent their spread into the adjacent Conserved Habitat Areas. **RP: Developer**

c. Fuelbreaks.

Fuelbreaks are required in the Borderland to separate the Conserved Habitat Area from development. Potential fuelbreaks include greenbelts, fuel reduction zones, fire roads, paved roads, tilled firebreaks, and parking lots.

OBJECTIVE: Construct and maintain fuelbreaks to provide a defensible space between Conserved Habitat Areas habitat areas and structures within development parcels.

i. Specific Action: Design fuelbreaks to 1) stop fire movement across the Borderland/Conserved Habitat Area boundary, 2) provide adequate access for fire suppression and fire prevention equipment and personnel to conduct controlled burns, 3) provide adequate access for fire suppression and fire prevention equipment and personnel to fight wildfires. The RP is responsible for defining an adequate fuelbreak width by incorporating, in the design stage, a process (e.g. working with fire-wise consultants, and/or informed local fire departments, and reserve managers) that considers topography, surrounding vegetation (fuels), type of development and configuration of the applicable Project Site. Fuelbreak width is to be designed considering all of the above factors. **RP: Developer**

ii. Specific Action: All fuelbreaks shall be at the Borderland/Conserved Habitat Area boundary, not necessarily at the parcel boundary, and shall be installed within the Borderland, not within the Conserved Habitat Area. Fuelbreaks on adjacent parcels shall be contiguous. **RP: Developer**

iii. Specific Action: Maintain fuelbreaks on the Borderland regularly, to ensure they continue to provide access for the proper management and utilization of prescribed fire and control of wildfire. In the case of an emergency the managing agency, Developer, and any other appropriate agency should have access to adjacent Conserved Habitat Areas and should, therefore, possess gate

keys required to obtain access as stated in the section on Access Control. **RP: Developer and FORA**

iv. Specific Action: Project development activities on a Project Site boundary shall be restricted within 200 feet of the Borderland/Conserved Habitat Area boundary until the provisions of defensible space and fuelbreak access are ensured through a plan prepared in consultation with fire wise consultants, and/or informed local fire departments, and reserve managers for the Project Site. **RP: Developer**

d. Storm Water Control and Groundwater Recharge.

The conversion of the Borderlands from open space to urban and other uses would alter site runoff peaks and duration. This could reduce the volume of groundwater infiltration by increasing the area of impervious surfaces and causing runoff to move across areas suitable for infiltration at a faster rate, which could interfere with groundwater recharge, as well as lead to siltation of drainages and erosion.

OBJECTIVE: Protect the Conserved Habitat Area from hydrologic modifications and erosion problems resulting from altered stormwater runoff caused by development on the Borderland.

i. Specific Action: Implement a stormwater drainage plan ("Drainage Plan") for development adjacent to Conserved Habitat Areas. The Drainage Plan shall describe 1) how storm water will be captured and directed off Project Sites, 2) what measures will be employed to prevent degradation and siltation of ephemeral drainages from Borderland run-off, 3) what specific erosion control measures will be implemented, and 4) what measures will be taken to protect the Conserved Habitat Area. All Borderland development must comply with the Drainage Plan as well as employ Best Management Practices during construction. **RP: Developer**

ii. Specific Action: Take all measures to ensure that on-site drainage systems are designed to capture and filter out urban pollution, to the extent feasible. **RP: Developer**

OBJECTIVE: Protect the Conserved Habitat Area from hydrologic modifications resulting from interference with groundwater recharge.

iii. Prior to beginning project development activities on a Project Site within the Borderland, demonstrate that all reasonable measures will be taken to ensure that runoff is minimized and infiltration maximized in groundwater recharge areas on the Project Site. **RP: Developer**

e. Firewise Planning.

For construction activities on the Borderland, the designated RP shall comply with the following requirements in addition to Section B of these Restrictions.

- i. Specific Action: Prepare and implement a hazardous substance control plan for all construction activities on the Borderland involving the handling, storing, transport, or disposal of hazardous waste materials. **RP: Developer**
- ii. Specific Action: Determine the potential for construction projects within the Borderland to exceed the 82 pound inhalable particulate threshold established by the Monterey Bay Unified Air Pollution Control District (MBUAPCD 1995). A general rule of thumb to determine if a project may have a significant construction related impact is to determine if the project would disturb 2.2 acres of land on or adjacent to the Project Site per day through grading and/or excavation. Projects on the Borderland with the potential to exceed this threshold shall implement measures to substantially reduce the amount of airborne dust or particulate matter. **RP: Developer**
- iii. Specific Action: Prepare a Storm Water Pollution Prevention Plan ("SWPPP") that describes the Best Management Practices to be implemented and monitored during construction on the Borderland. **RP: Developer**

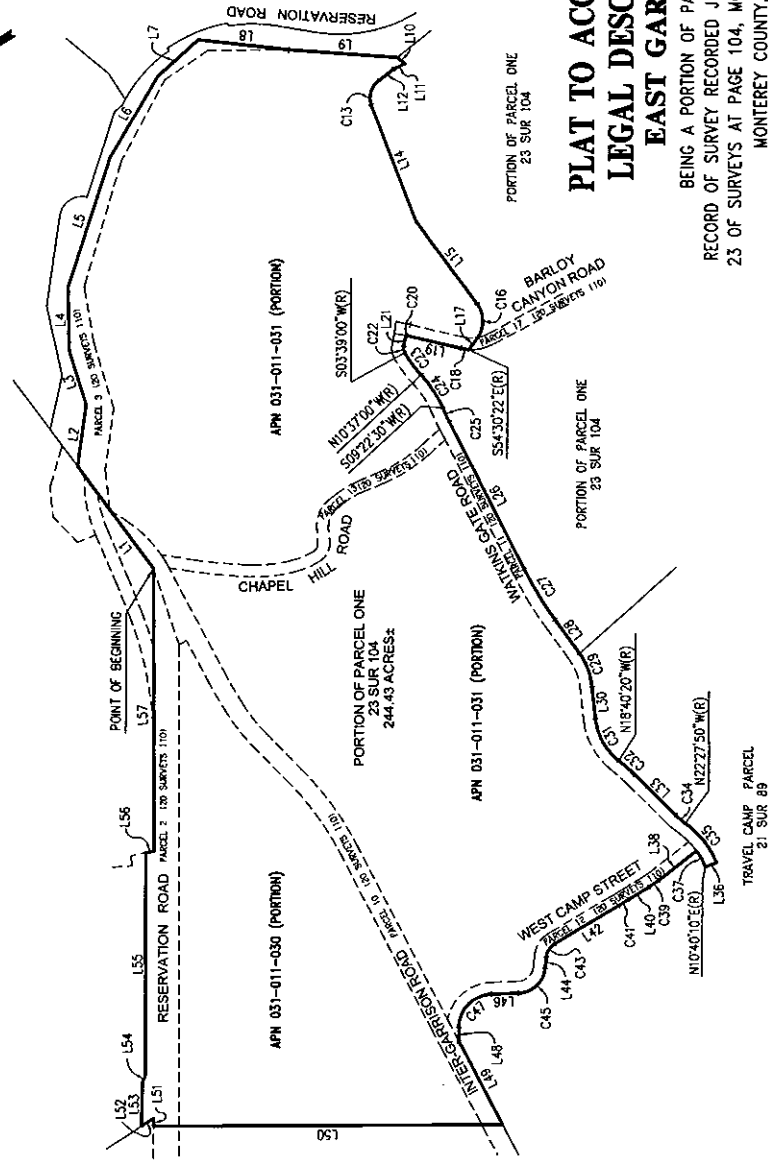
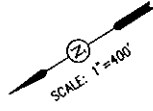
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L2	S80°06'58"E	371.97
L3	S74°46'08"E	280.64
L4	S58°35'42"E	124.17
L5	S40°05'11"E	697.82
L6	S27°33'51"E	478.75
L7	N21°44'30"W	58.68
L8	S48°47'16"W	464.82
L9	S38°27'16"W	553.37
L10	S73°07'44"W	501.80
L11	N68°08'06"E	62.52

TANGENT TABLE		
NO.	BEARING	LENGTH
L12	N05°15'27"W	94.71
L13	N78°36'32"W	632.84
L14	N86°20'31"E	521.93
L15	N22°23'38"W	71.92
L16	N45°58'10"E	278.86
L17	N44°43'00"W	58.68
L18	N84°20'10"W	842.92
L19	S86°57'00"W	212.93
L20	N63°43'50"W	166.36
L21	S77°22'50"W	292.82
L22	N10°40'10"E	80.00

TANGENT TABLE		
NO.	BEARING	LENGTH
L23	N05°48'10"W	243.25
L24	N00°28'40"E	123.80
L25	N01°07'20"E	371.18
L26	N62°20'00"W	57.65
L27	N59°27'00"E	134.37
L28	N58°40'10"W	70.02
L29	N65°01'10"W	490.03
L30	N32°41'08"E	1772.68
L31	S57°56'50"E	1135.76
L32	S71°35'29"W	416.64
L33	S57°53'16"E	1442.38

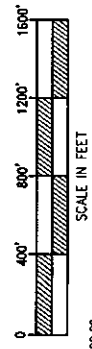
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L37	S57°53'16"E	1442.38

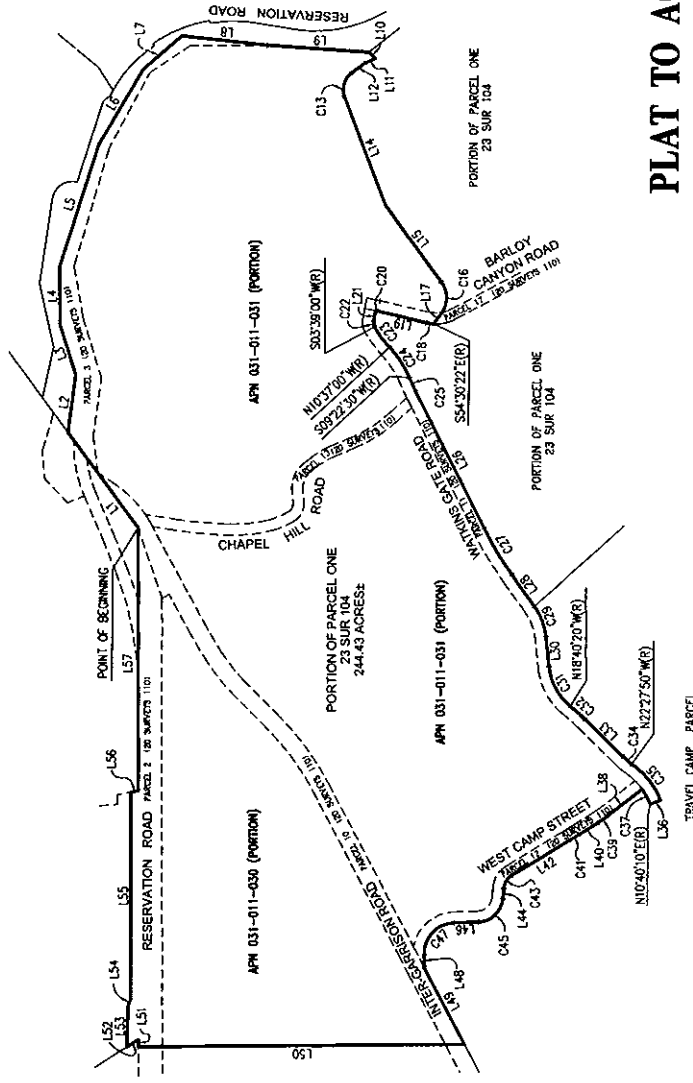
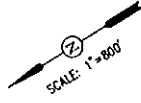
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C16	150.00'	71°15'51"	186.57'
C18	230.00'	107°28'32"	42.05'
C20	970.00'	00°32'15"	9.10'
C22	45.00'	38°38'00"	30.34'
C23	570.00'	141°16'00"	144.93'
C24	580.00'	193°30'00"	202.37'
C25	1720.00'	03°42'40"	79.02'
C27	1970.00'	08°42'50"	299.61'
C29	355.00'	29°19'10"	181.66'
C31	370.00'	44°56'30"	251.00'
C32	1030.00'	06°03'10"	108.81'
C34	370.00'	09°50'40"	63.57'
C35	445.00'	33°08'00"	257.34'
C37	385.00'	13°57'59"	93.85'
C38	530.00'	06°12'50"	57.48'
C41	5030.00'	00°40'40"	39.50'
C43	90.00'	53°27'20"	83.97'
C45	140.00'	82°47'00"	202.28'
C47	170.00'	88°07'10"	284.42'



**PLAT TO ACCOMPANY
LEGAL DESCRIPTION
EAST GARRISON**

BEING A PORTION OF PARCEL 1 OF THE
RECORD OF SURVEY RECORDED JUNE 26, 2000, IN VOLUME
23 OF SURVEYS AT PAGE 104, MONTEREY COUNTY RECORDS.
MONTEREY COUNTY, CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS - SURVEYORS - PLANNERS
SAN RAMON, CALIFORNIA
DATE: JUNE 2005
SCALE: 1"=400'





PLAT TO ACCOMPANY LEGAL DESCRIPTION EAST GARRISON

BEING A PORTION OF PARCEL 1 OF THE
RECORD OF SURVEY RECORDED JUNE 26, 2000, IN VOLUME
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SCALE: 1"=400'

SHEET 1 OF 1

6:\28\600\PLAT\PL1-9.DWG

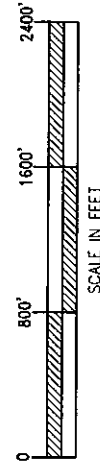
NO.	RADIUS	DELTA	LENGTH
C13	115.00'	73.2105°	147.23'
C16	150.00'	71.1551°	186.57'
C18	230.00'	10.2832°	42.05'
C20	970.00'	00.3215°	9.10'
C22	45.00'	39.3800°	30.34'
C23	570.00'	14.1800°	141.93'
C24	580.00'	19.5930°	202.37'
C25	1220.00'	03.4240°	79.02'
C27	1870.00'	08.4250°	289.61'
C28	355.00'	28.1910°	181.66'
C31	320.00'	44.5830°	251.00'
C32	1030.00'	06.0310°	108.81'
C34	370.00'	09.5840°	63.57'
C35	445.00'	13.0800°	257.34'
C37	385.00'	13.5759°	93.65'
C39	530.00'	06.1250°	57.48'
C41	500.00'	00.4040°	59.50'
C43	90.00'	53.2720°	83.97'
C45	140.00'	82.4700°	202.28'
C47	170.00'	89.0710°	284.42'

TANGENT TABLE		
NO.	BEARING	LENGTH
L38	N0546.10°W	243.25'
L40	N0026.40°E	123.80'
L42	N0107.20°E	371.18'
L44	N5220.00°W	57.65'
L46	N3027.00°E	134.37'
L48	N6940.10°W	70.02'
L49	N8501.0°W	480.03'
L50	N3714.08°E	1772.68'
L51	S5745.52°E	40.03'
L52	N0040.37°W	73.68'
L53	S5604.56°E	225.68'

TANGENT TABLE		
NO.	BEARING	LENGTH
L12	N0515.27°W	94.71'
L14	N7836.52°W	632.84'
L15	N6620.31°E	521.93'
L17	N2223.38°W	71.92'
L19	N4538.10°E	276.86'
L21	N4743.00°W	58.68'
L26	N8420.10°W	842.92'
L28	S8657.00°W	212.93'
L30	N6345.50°W	166.36'
L33	S7722.50°W	292.82'
L36	N1040.10°E(S)	60.00'

TANGENT TABLE		
NO.	BEARING	LENGTH
L1	N8610.27°E	647.50'
L2	S8006.58°E	317.97'
L3	S7448.08°E	287.64'
L4	S5835.42°E	324.17'
L5	S4005.11°E	687.82'
L6	S2735.51°E	478.75'
L7	S0943.24°E	277.22'
L8	S3847.16°W	464.82'
L9	S3627.16°W	553.37'
L10	S7307.44°W	50.80'
L11	N0808.06°E	62.52'

TANGENT TABLE		
NO.	BEARING	LENGTH
L54	S3620.16°E	39.45'
L55	S5736.50°E	1135.76'
L56	S2135.29°W	41.64'
L57	S5733.16°E	1442.33'



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