

PROGRAMMATIC AGREEMENT AMONG
THE DEPARTMENT OF THE ARMY,
THE
STATE HISTORIC PRESERVATION OFFICER, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE CLOSURE AND TRANSFER OF SELECT PARCELS OF
UMATILLA CHEMICAL DEPOT, OREGON

WHEREAS, the Department of the Army (Army) has closed Umatilla Chemical Depot (UMCD) as an active military installation and is proceeding with disposal of the property through, economic development conveyances, public benefit conveyances, competitive sales, negotiated sales, or a combination thereof in a manner consistent with the requirements of the 2005 Base Realignment and Closure Commission (BRAC) thereby making the undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. § 470f and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, UMCD was slated for closure and transfer under the 2005 BRAC report and the Army began compliance with federal laws related to that action; UMCD was removed from the BRAC closure process in February of 2011 and all Section 106 and National Environmental Policy Act (NEPA) activities underway at that time were stopped; in early 2012, the Defense Authorization Bill put UMCD back under BRAC for closure and transfer and both Section 106 and NEPA compliance activities were resumed; and

WHEREAS, UMCD was closed on August 1, 2012; and

WHEREAS, the Army has defined the Area of Potential Effects (APE) of this undertaking to be the entire installation, encompassing approximately 17,070 acres of land in northeast Oregon near the border with the State of Washington (Attachment A); and

WHEREAS, the Army has determined that the undertaking has the potential to adversely affect historic properties, which are eligible for listing in the National Register of Historic Places (National Register), and has consulted with the Oregon State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800; and

WHEREAS, the Army, pursuant to 36 C.F.R. § 800.3(f)(2), consulted with the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Grand Ronde Community, the Confederated Tribes of the Umatilla Indian Reservation (CUTIR), Confederated Tribes of the Warm Springs Reservation, the Nez Perce Tribe, and the Spokane Tribes of Indians, federally-recognized Indian tribes (Tribes) who have been invited to sign this Programmatic Agreement (Agreement) as a concurring party; and

WHEREAS, the public has been notified and provided an opportunity to comment on the undertaking through public meetings and comments sought under NEPA; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Army has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, the Local Redevelopment Authority (LRA) has prepared a redevelopment plan for the Army to consider in the disposal of property not transferred to another federal or state agency, 9,474 acres, as shown in Attachment B. The Oregon Department of Transportation will receive 96 acres of land along Interstate Highway 82 on the eastern edge of the installation, as shown in Attachment B; and

WHEREAS, the National Guard Bureau (NGB) is designated to receive the remaining parcels of the installation, 7,500 acres, in a federal agency-to-federal agency transfer from the Army as shown in Attachment B, which is not deemed an undertaking under the NHPA and is not part of this Section 106 consultation or Agreement, and any NGB projects that constitute undertakings will be subject to separate Section 106 consultations with NGB as the agency official pursuant to 36 C.F.R. § 800.2(a), this includes the Headquarters Building (Building 1) and the Fire House (Building 2) which are eligible for the National Register; and

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

Stipulations

The Army will ensure the following stipulations are carried out concerning all historic properties within the designated APE at UMCD prior to transfer of lands out of federal ownership.

(A) Archeological Resource Identification and Assessment:

For archaeological activities resulting in a written report, forms or other documents, the SHPO and consulting parties will be afforded thirty (30) days after receipt of any document to comment on the documentation submitted by the Army. Documents may then be revised considering the comments received. The Army will respond to consulting parties' comments explaining how they will be addressed.

1. General.

- a. Any archaeological investigations conducted by the Army shall utilize consultants meeting the Secretary of the Interior's "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines

[As Amended and Annotated].” (Professional Qualifications) and follow the SHPO’s *Guidelines for Conducting Field Archaeology in Oregon*.

- b. The Army is responsible for conducting phased archaeological investigations for the parcels being transferred out of federal ownership. The sequential phases of investigations are comprised of: Phase 1a, reconnaissance survey and background research and Phase 1b, archaeological investigation. A work plan for each phase of investigation will be submitted to the SHPO and CTUIR for review and comment before work commences. The phases may be combined into fewer studies to reduce the numbers of work plans and reports produced and submitted for review. A State site form and Determinations of Eligibility (DOE) will be produced for each resource identified during the phased investigations.
- c. All resulting artifact collections, images, field notes, records, digital data, and geospatial data generated by the archaeological investigations pursuant to this PA will be curated by the Army in accordance with 36 C.F.R. Part 79.
- d. Future NHPA compliance for UMCD lands transferred to another federal agency will be the responsibility of the receiving agency.

2. Phase 1a

- a. Within one year of signing this Agreement, the Army will complete a reconnaissance survey of archaeological site identification to consist of detailed background research and a surface reconnaissance of the entire APE to determine levels of disturbance, soil accumulation, surface visibility, and other factors relevant to creating a strategy for subsurface investigations.
 - i. If human remains are encountered during any surveys conducted by the Army pursuant to this Agreement, treatment of those human remains, including prehistoric and historic burials, will be carried out in accordance with the Native American Graves and Repatriation Act (NAGPRA).
 - ii. A draft report, following SHPO’s *State of Oregon Archaeological Reporting Guidelines*, containing the findings and recommendations of the Phase 1a study shall be submitted to the SHPO and the CTUIR for a 30 calendar-day period of review and comment prior to completion of the document.

- iii. The final report shall be distributed to all concurring and signatory parties, except the ACHP, to this agreement within 42 calendar days of receiving comments from the SHPO and the CTUIR.

3. Phase 1b

- a. Within one year of completing Phase 1a and in the event that Phase 1a indicates that one or more of the areas evaluated have potential to possess intact archeological remains, the Army will conduct a Phase 1b archaeological investigation, employing shovel testing, of those areas to determine whether intact archaeological strata and remains are present. A shovel testing plan which complies with SHPO Guidelines for Conducting Field Archaeology in Oregon will be developed with consulting parties. Limited archaeological shovel testing will be conducted in the margins around igloos to determine if intact deposits remain that could bear cultural resources.
 - i. If human remains are encountered during any surveys conducted by the Army pursuant to this Agreement, treatment of those human remains, including prehistoric and historic burials, will be carried out in accordance with NAGPRA.
 - ii. A draft report, following SHPO's *State of Oregon Archaeological Reporting Guidelines*, containing the findings and recommendations of the Phase 1b investigation shall be submitted to the SHPO and the CTUIR for a 30 calendar-day period of review and comment prior to completion of the document.
 - iii. The final report shall be distributed to all concurring and signatory parties, *except* the ACHP, to this agreement within 42 calendar days of receiving comments from the SHPO and the CTUIR.

4. Determination of National Register Eligibility

- a. If any archaeological resources are identified during the Phase 1b survey, DOE for inclusion in the National Register shall be made by applying the criteria as set forth in 36 C.F.R. §60.(4) and the SHPO's *Cultural Property Inventory and Request for a Determination of Eligibility* form.
- b. The Army will make DOE in consultation with the CTUIR and seek concurrence on those determinations from the SHPO within 180 calendar days of completing Phase 1b.

- c. If a DOE cannot be made without further testing, the resource will be treated as eligible.
- d. Disputes regarding eligibility will be sent to the Keeper of the National Register in accordance with 36 C.F.R. Part 63.

(B) Architectural Resource Identification and Assessment:

1. General.

- a. Professional Qualifications. All architectural investigations conducted by the Army shall utilize consultants meeting the Secretary of the Interior's Professional Qualifications in one or more of the areas of history, architectural history, historic architecture, or historic preservation, as defined in Federal Register 33708 (Vol. 62, No. 119).
- b. Identification and Assessment Standards. Identification and assessment shall meet all reconnaissance survey requirements as delineated in the SHPO's *Guidelines for Historic Resource Surveys in Oregon* and National Register Bulletin #15, *How to Apply the National Register Criteria for Evaluation*.
- c. The Army will make every effort to complete all investigations pursuant to this Agreement prior to the transfer of any parcels to non-federal entities. However, should the Army transfer any parcel to a non-federal entity prior to completion of any investigation in this stipulation, the Army shall ensure that it will have unencumbered site access to complete historic property identification and any necessary mitigation efforts as a condition of the transfer.
- d. Future NHPA compliance for UMCD lands transferred to another federal agency will be the responsibility of the receiving agency.

2. Inventory and Assessment. The Army shall inventory and assess the built infrastructure of UMCD, including portions scheduled to be transferred to another federal agency.

- a. Historic Contexts. The Army shall use existing historic contexts (World War II and Cold War) for re-evaluation and develop concise local historic context in which to evaluate the buildings for National Register eligibility.
- b. Inventory. The Army shall conduct a reconnaissance level survey of all non ammunition storage facilities using the Oregon Historic Sites Database and the Guidelines for Historic Resources Surveys in Oregon. A

representative sample of ammunition storage facilities, to be determined in consultation with the SHPO, shall be inventoried. The representative sample will be the basis for determination that applies to all ammunition storage facilities at UMCD.

- c. Assessment. The Army shall use the historic contexts to evaluate all properties
3. Coordination of National Register Determinations with SHPO.
- a. The Army shall complete the inventory in the Oregon Historic Sites Database and submit its determinations of eligibility, along with an evaluation of the properties within national and local contexts, within one year of signing this agreement.
 - b. The SHPO shall respond to the Army's determination in writing within 30 calendar days of submission.
 - c. Should the Army and the SHPO fail to concur on National Register Eligibility, the Keeper of the Register shall be the arbiter as per 36 C.F.R. Part 63.
 - d. Any historic property transferred out of federal control shall be adversely affected and shall receive mitigation in Stipulation D (2).
4. Applicability of ACHP Program Comments.

The Advisory Council on Historic Preservation issued Program Comments (Program Comments) for World War II and Cold War Era (1939-1974) Ammunition Storage Facilities on August 18, 2006. Ammunition storage facilities at UMCD consist of all earthen-covered ("igloos") and above-ground ammunition storage magazines as listed in Table 1 of the Program Comments. Ongoing operations, maintenance, repair, rehabilitation, renovation, mothballing, new construction, demolition, deconstruction and salvage, remediation activities, transfer, sale, lease, and closure shall proceed on any applicable property at UMCD without any further coordination.

- a. If a historic property is classified as an ammunition storage facility and is contributing to an eligible historic district where the context of the district is not exclusive to ammunition related storage facilities, the ACHP Program Comment for Ammunition Storage Facilities does not apply.
- b. If a historic property classified as an ammunition storage facility and is contributing to an eligible historic district where the context of the district is exclusively comprised of ammunition storage related facilities, the ACHP Program Comment for Ammunition Storage Facilities applies.

(C) Properties of Religious and Cultural Significance:

For activities concerning properties of religious and cultural significance to the CTUIR resulting in a written report, forms or other documents, the Tribe will be afforded 30 calendar days after receipt of any document to comment on the documentation submitted by the Army. Documents may then be revised considering the comments received. The Army will respond to consulting parties' comments explaining how they will be addressed.

Within one year of the signing of this Agreement, the Army shall conduct an inventory of Properties of Religious and Cultural Significance (PRCS) to the CTUIR.

1. Identification of PRCS Prior to transfer, a survey to identify PRCS to the CTUIR will be conducted. The survey shall include extensive background research and interviews with appropriate tribal members to develop a cultural context and history for the resources at UMCD. On-site visits to the UMCD property will be conducted with tribal members to locate and identify PRCS.
2. Determination of National Register Eligibility. National Register eligibility determinations for each PRCS identified shall be made in consultation with the SHPO and the Tribe by applying the criteria as set forth in 36 CFR §60.(4). The Army will make determinations of eligibility in consultation with the SHPO and CTUIR.
3. Reporting. Upon completion of the PRCS survey, the Army shall submit draft reports (both hard copies and electronic copies on computer disk) to the CTUIR. Information shared with the SHPO will be at the tribe's discretion. Comments shall be provided to the Army within 30 calendar days of the receipt of the document. The final report will be distributed to the CTUIR. The tribe will determine what information is distributed to the SHPO.

(D) Treatment of Historic Properties:

1. Archaeological Sites. If any National Register eligible historic properties are identified within the property to be transferred out of federal control, the Army shall consult with the SHPO and the CTUIR to determine appropriate measures to avoid, minimize, or mitigate adverse effects to those historic properties.
 - a. Consultation will begin within 30 calendar days of the DOE. Parties will make every effort to reach a consensus on treatment for adversely effected properties within 90 calendar days of the start of consultation.
 - b. The agreed upon treatment for historic properties will be implemented by the Army within 90 calendar day of agreement on treatment, pending availability of funding.

2. Above-Ground Historic Properties. Adverse effects on above ground properties transferring out of federal control shall be mitigated through the following actions:
 - a. Historic properties that shall be destroyed under international treaty shall be mitigated by completion of recordation to the standards of the Historic American Building/Engineering Survey Level II documentation.
 - b. Historic Ammunition Storage Facilities that meet the application of the ACHP Program Comments for Ammunition Storage Facilities have been previously mitigated and no further coordination is required.
 - c. All other historic properties at UMCD that are adversely affected shall be mitigated in the following manner:
 - i. The Army shall produce digital photographic documentation of the entire UMCD consisting of a minimum of 250 geo-tagged images with appropriate meta data within 180 calendar days of determination of adverse effect. The images shall be made available to all consulting parties – except the ACHP - and the public via the internet for a minimum of two years.
 - ii. The Army, in consultation with the SHPO, shall develop a portable interpretive exhibit and establish a program by which the display will be made available to institutions around the State of Oregon within one year of the determination of adverse effect
 - iii. The Army, in consultation with the SHPO, shall develop a brochure in an Adobe Acrobat pdf file format geared toward education and awareness of UMCD's history and historic properties within one year of the determination of adverse effect. The brochure will be made available on the SHPO, U.S. Army Corps of Engineers, UMCD and LRA websites.
3. Properties of Religious and Cultural Significance. If any National Register eligible PRCS are identified within the property to be transferred out of federal control, the Army shall consult with the SHPO and the affected tribe(s) to determine appropriate measures to avoid, minimize, or mitigate adverse effects to those properties.
 - a. Consultation will begin within 30 calendar days of the determination of eligibility. Parties will make every effort to reach a consensus on treatment for adversely effected properties within 90 calendar days of the start of consultation.

- b. The agreed upon treatment for historic properties will be implemented by the Army within 90 calendar days of agreement on treatment, pending availability of funding.

(E) Dispute Resolution:

Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Army shall consult with such party to resolve the objection. If the Army determines that such objection cannot be resolved, the Army will:

1. Forward all documentation relevant to the dispute, including the Army's proposed resolution, to the ACHP. The ACHP shall provide the Army with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Army shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Army will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the 30 calendar day time period, the Army may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Army shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the ACHP with a copy of such written response.
3. Carry out all other actions subject to the terms of this PA that are not the subject of the dispute.

(F) Duration:

This Agreement shall be null and void if its terms are not carried out within 10 years from the date of its execution. Prior to such time, the Army may consult with the other signatories to reconsider the terms of the Agreement and amend in accordance with this stipulation.

(G) Amendments:

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

(H) Termination:

If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation G, above. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, the Army must either (a) execute a Memorandum of Agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Army shall notify the signatories as to the course of action it will pursue.

(I) Reporting and Monitoring:

Upon execution of this PA, the Army will submit, via email, a bi-annual update on the status of all activities covered by this PA to consulting parties other than the ACHP and other interested parties. Updates will be submitted until all activities covered by this PA have been completed.

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

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THE DEPARTMENT OF THE ARMY,
THE
STATE HISTORIC PRESERVATION OFFICER, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE CLOSURE AND TRANSFER OF SELECT PARCELS OF
UMATILLA CHEMICAL DEPOT, OREGON

SIGNATURE PAGE:


US ARMY

By:  Date 2 Dec 13
H. CHARLES HODGES JR. COLONEL, IN Commanding

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SIGNATURE PAGE:

OREGON STATE HISTORIC PRESERVATION OFFICER

By:  Date 12-12-13
ROGER ROPER, Deputy State Historic Preservation Officer

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SIGNATURE PAGE:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date 12/30/13
JOHN FOWLER, Executive Director

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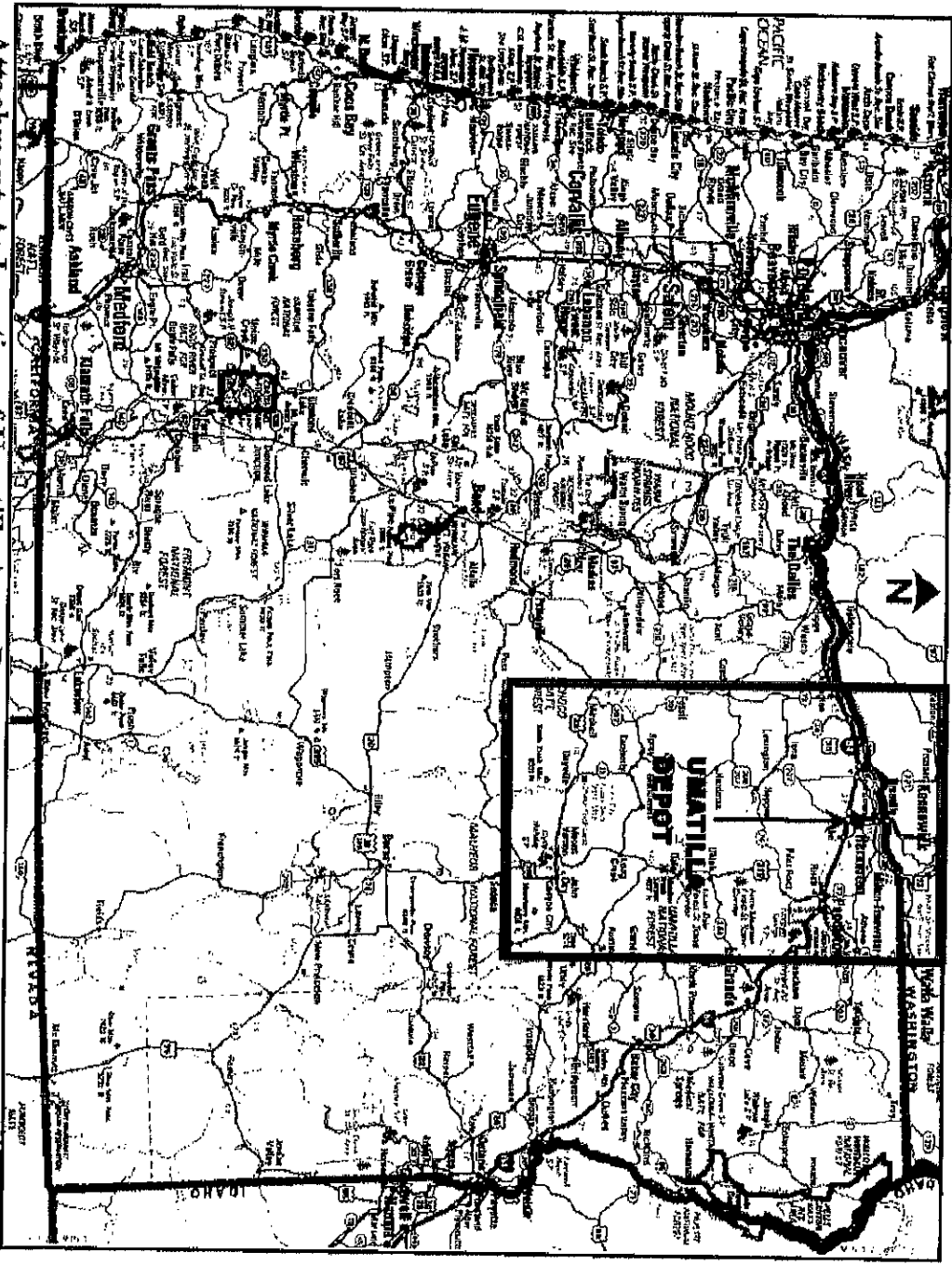
CONSULTING PARTIES:

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

By: _____ Date _____
LES MINTHORN, Chairman, Board of Trustees

ATTACHMENT A
Project Location Map

Attachment A: Location of Umatilla Army Depot



ATTACHMENT B
Umatilla Chemical Depot Reuse Map



DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
CORPS AND JOINT BASE LEWIS-MCCHORD
BOX 338500, MS 69
JOINT BASE LEWIS-MCCHORD, WASHINGTON 98433-9500

REPLY TO
ATTENTION OF:

AFZH-JAE

21 November 2013

MEMORANDUM FOR The Joint Base Commander, Building 1010, Joint Base Lewis-McChord, WA 98433-9500

SUBJECT: Historic Preservation programmatic agreement for Umatilla Chemical Depot.

1. Relevant Facts: Umatilla Chemical Depot was closed on August 1, 2012. As part of the redevelopment plan, some or all of the 9,474 acres will be transferred out of federal control. This could lead to an adverse impact to historical properties. In such cases federal law requires consultation with the State Historic Preservation Officer pursuant to 36 C.F.R. Part 800, and other parties. An written agreement is typically used to memorialize agreements arising from the historic preservation consultation.

2. Legal Authority: The National Historic Preservation Act, 16 USC 470; DODI 4715.16; AR 200-1 and 36 C.F.R. § 800 authorize this agreement between the State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Department of Army. The Joint Base Commander has command authority for Umatilla and is the appropriate official to sign this agreement.

3. Analysis: The programmatic agreement memorializes agreements on how the Army will preserve historic properties and artifacts at UMCD as the property is transferred to other agencies and out of federal control. If signed by the parties, it will allow the BRAC closure process for UMCD to continue and the Army's obligation under the above-cited authorities to be met.

4. Legal Sufficiency: The programmatic agreement appears to be legally sufficient and sufficient for its purpose.

5. The point of contact for this memorandum is Lawson Dumbeck, Civil Law Attorney, OSJA, JBLM, 253-477-1842, lawson.j.dumbeck.civ@mail.mil.

LAWSON J. DUMBECK
Attorney Advisor



Attachmnet B: Proposed Reuse of Umatilla Army Depot

Programmatic Agreement Regarding the Closure and Transfer of Umatilla Chemical Depot, Oregon