

APPENDIX H

**MOA between the Department of the Navy and the California
State Historic Preservation Officer for the Disposal and Reuse
of Naval Station Treasure Island**

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Memorandum of Agreement
Between
The Department of the Navy
And
The California State Historic Preservation Officer
For the Layaway, Caretaker Maintenance, Interim Leasing, Sale, Transfer,
and Disposal of Historic Properties on the Former
Naval Station Treasure Island, San Francisco, California

WHEREAS, the Department of the Navy (DoN) has been directed to close, lease and dispose of its property at the former Naval Station Treasure Island (NSTI) pursuant to the Defense Base Closure and Realignment Act of 1990 (undertaking), has determined that the undertaking will affect properties located on the former NSTI that are listed on, have been determined eligible for, or may be potentially eligible for listing on the National Register of Historic Places (historic properties), has consulted the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act, as amended (16.U.S.C. 470f) (NHPA)), has notified the Advisory Council on Historic Preservation (Council) of the effect finding pursuant to 36 CFR Section 800.6(a)(1), and has received notification that the Council declines to participate in the consultation (See Attachment I); and

WHEREAS, NSTI is located within the limits of the City and County of San Francisco (City), a Certified Local Government under Section 101(c) of the NHPA, and Article 10 of the San Francisco Planning Code specifically addresses *Preservation of Historical Architectural and Aesthetic Landmarks*; and

WHEREAS, the Treasure Island Development Authority (TIDA), a non-profit, public benefit corporation established by the City, is recognized by the Department of Defense as the Local Redevelopment Authority for NSTI, and

WHEREAS, upon disposal of the historic properties from the DoN to a non-Federal entity, any Federal jurisdiction ceases and the jurisdiction of the historic properties reverts exclusively to the City;

WHEREAS, the DoN has informed consulting parties and members of the public about the undertaking and involved such parties and the public in the consultation process using agency procedures for public involvement under the National Environmental Policy Act;

1 **NOW THEREFORE**, the DoN and the SHPO agree that the layaway, caretaker
2 maintenance, interim leasing, sale, transfer, and disposal of historic properties
3 (hereinafter, "leasing and disposal) at NSTI shall be implemented in accordance with the
4 following stipulations in order to take into account the effect of the undertaking on
5 historic properties, and that these stipulations shall govern leasing and disposal at NSTI
6 until this Memorandum of Agreement (hereinafter, "MOA") is terminated.

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9 **STIPULATIONS**

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11 The DoN will ensure that the following measures are carried out:

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14 **I. NATIONAL REGISTER NOMINATIONS**

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16 A. The DoN will nominate the following historic properties, depicted in
17 Attachment 3, to the National Register in accordance with Section
18 110(a)(2) of the National Historic Preservation Act (16 U.S.C. 470h2):

- 19
20 1. The Senior Officers Quarters Historic District (Yerba Buena
21 Island): as follows:
22 (a) Quarters 1 through 7
23 (b) Building 83
24 (c) Building 205, and
25 (d) Building 230
26 2. Quarters 10 (Yerba Buena Island) Officers Quarters
27 3. Building 267 (Yerba Buena Island) Garage to Building 10
28 4. Building 262 (Yerba Buena Island) The Torpedo Building
29 5. Building 1 (Treasure Island), Administration Building, Golden
30 Gate Exposition
31 6. Building 2 (Treasure Island), Hall of Transportation, Golden Gate
32 Exposition
33 7. Building 3 (including Building 111) (Treasure Island), Palace of
34 Fine and Decorative Arts and Annex, Golden Gate Exposition

35
36 B. The DoN will submit the above nominations to the Keeper of the National
37 Register in accordance with 36 CFR § 60.9 prior to disposal.

38
39 **II. ARCHAEOLOGY**

40
41 A. The DoN completed an inventory of the archeological resources located
42 on the former NSTI. The potential Archeological Sensitive Zones were
43 identified in the *Archeological Resource Inventory and Assessment of*
44 *Naval Station Treasure Island Disposal and Reuse Project, San Francisco*
45 *County, California, June 1997* and are depicted in Attachment 4.
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B. Prior to the DoN's disposal of NSTI, the DoN will submit a Research Design/Discovery Plan to the SHPO, that clearly delineates specific procedures to be taken, under various scenarios. The Navy will seek SHPO concurrence prior to conducting field work. The Research Design/Discovery Plan will outline the procedures to be followed, the decision-making process and consultation process with SHPO and other appropriate parties. As will be discussed in the Research Design/Discovery Plan, the Navy will conduct additional archaeological survey and / or archaeological testing and mitigation within identified Archaeological Sensitive Zones 1 – 4 that may be required and which may include:

1. Accurate delineation of sensitive areas and known archaeological sites on DoN property, including those contiguous portions that may occur on adjacent property.
2. Testing of known sensitive areas and archaeological sites to determine the significance of potential buried archaeological deposits.
3. Survey of submerged sensitive areas by qualified maritime archaeologists to determine the presence of potentially significant submerged resources.
4. Consultation with the SHPO to determine significance of any buried or submerged resources discovered during the testing and delineation of sensitive areas.
5. Development of treatment plans and implementation of mitigation measures in consultation with the SHPO for archaeological sites discovered through testing that are determined significant.
6. Consultation with the Bay Miwok prior to any ground disturbing archaeological testing or mitigation activities in areas believed to contain archaeological deposits that may be significant to the Bay Miwok. The Navy will make every attempt to contact the Bay Miwok, including correspondence, phone calls, e-mails, etc., and will assume no interest on the part of the Bay Miwok if no formal correspondence is received within 30 days.

C. Non-Applicability

1. The Federal Highway Administration obtained fee title to a portion of NSTI from the DoN and subsequently conveyed that property by deed dated October 26, 2000, to the California Department of Transportation (CALTRANS) for purposes of the San Francisco

1 Bay Bridge Seismic Retrofit. As a result of these actions, this
2 MOA does not apply to the historic properties which are located
3 within the former NSTI and which are now owned by CALTRANS
4 (see Attachment 2). Such properties include:
5

6 a. Potential archaeological sites and sensitive zones at Yerba
7 Buena Island that are documented in the *Archeological*
8 *Resource Inventory and Assessment of Naval Station*
9 *Treasure Island Disposal and Reuse Project, San*
10 *Francisco County, California, June 1997*, including the
11 following:
12

- 13 1. A portion of Archeological site CA-SFr-4/H in
14 Zone 1; and
- 15 2. A portion of an Historic/Prehistoric archaeological
16 deposit in Zone 2;
- 17 3. A portion of Zone 3, (which may include
18 undocumented submerged resources); and
- 19 4. A portion of the Twentieth Century Landfill in Zone
20 4.
21

22 III. HISTORIC ARTIFACTS AND RECORDS 23

- 24 A. DoN-owned historic artifacts and records that were included in the
25 Treasure Island Naval and Marine Corps Museum will remain the
26 responsibility of the Director of the Naval Historical Center, Washington
27 Navy Yard, District of Columbia.
28
- 29 B. The DoN has coordinated the disposal of Naval Station Treasure Island
30 photographs with the National Archives Pacific-Sierra Region, San Bruno,
31 and will transfer them to the National Archives from the DoN's
32 Caretaker Site Office upon completion of preservation measures.
33
- 34 C. The DoN has turned over to the City Department of Public Works plans,
35 building drawings and construction photographs that were in the
36 possession of the Naval Station Treasure Island Staff Civil Engineer's
37 Office.
38
- 39 D. Financial and administrative records were transferred to Naval Station San
40 Diego and Naval Base San Diego, respectively, because these facilities
41 assumed operation responsibilities for NSTI at closure.
42

43 IV. RECORDATION 44

- 45 A. DoN shall ensure that the non-archaeological historic properties listed in
46 Stipulation I.A. of this MOA, with the exception of Building 1 (Treasure

1 Island) and Building 262 (Yerba Buena Island), are recorded prior to
2 disposal from Federal ownership.

3
4 1. Buildings 1 and 262 are called out in the City's *Naval Station*
5 *Treasure Island Reuse Plan* (June 1996) as being priorities for
6 preservation.

7
8 B. The DoN shall contact the Pacific-Great Basin System Support Office,
9 National Park Service (NPS), Oakland, California to determine what level
10 and kind of recordation is recommended by NPS for such historic
11 properties.

12
13 C. The DoN shall provide copies of the final documentation prepared
14 pursuant to paragraph A. of this stipulation to the SHPO, the City, and the
15 San Francisco International Airport Bureau of Exhibitions, Museums, and
16 Cultural Exchange.

17
18 **V. LICENSING AND LEASING OF HISTORIC PROPERTIES**

19
20 A. In order to maintain and protect historic properties covered by this
21 agreement, the DoN may enter into licenses and leases for the use of DoN
22 real property at NSTI prior to disposal in accordance with Section 5 of the
23 *Base Reuse Implementation Manual* (Attachment 5).

24
25 1. The DoN shall require all licensees/lessees to submit written plans
26 for any proposed work on historic properties for DoN review and
27 approval. Work may not proceed until the licensee/lessee has
28 received written approval from the DoN, which shall not be
29 granted unless the proposed work conforms to the Secretary of the
30 Interior's *Standards for Rehabilitation and Guidelines for*
31 *Rehabilitating Historic Buildings (Rehabilitation Standards)*.

32
33 a. DoN review of plans submitted for proposed work on
34 historic properties shall be conducted by persons who shall,
35 at a minimum, meet the Secretary of the Interior's
36 Professional Qualification Standards (Qualification
37 Standards) in the appropriate disciplines (Attachment 6).

38
39 2. No further consultation with the SHPO shall be required hereunder
40 unless the DoN determines that the proposed work does not and
41 cannot be modified to conform to the *Rehabilitation Standards*.

42
43 a. If the DoN determines that the proposed work does not and
44 cannot be modified to conform to the *Rehabilitation*
45 *Standards*, the DoN may either reject the proposed work or
46 consult pursuant to 36 CFR Part 800.

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3. Further consultation with the SHPO will not be required for painting previously painted interior and exterior surfaces in non-traditional colors for temporary uses, provided that the lessee has posted an adequate bond to insure that the property will be restored when the temporary use is complete.
4. Lease Agreements prevent lessees from undertaking any activity that may affect an identified historic or archaeological property, without the approval of the DoN. The DoN shall provide a list of traditional and non-traditional colors to lessees planning to paint historic properties covered by this MOA and only those colors may be used to paint the subject properties. The DoN shall retain the option that, prior to conveyance, lessee shall be required to restore historic properties to their original color scheme. The DoN will prepare a Technical Memorandum Report (TMR) identifying the "original conditions". The TMR will be submitted for review and approval by the SHPO prior to the commencement of any such restoration efforts.
5. The DoN shall retain the right to inspect leased historic properties at least annually to ensure that the *Rehabilitation Standards* are followed and shall take appropriate remedial action to assure compliance where deviations are observed.

VI. LONG TERM PRESERVATION PLANNING

- A. Upon conveyance of NSTI from the DoN, all historic properties conveyed as set forth herein shall fall within the jurisdiction of the City, a Certified Local Government under Section 101(c) of the NHPA. As such, all historic properties conveyed as set forth herein shall be subject to the City of San Francisco Planning Code, Article 10, Preservation of Historical, Architectural, and Aesthetic Landmarks (Attachment 7).
- B. Upon conveyance of NSTI from the Navy to the TIDA or other designated property recipient, and in the event of a discovery in an Archeological Sensitive Zone, the City may designate a lot or site as a landmark site pursuant to Section 1004 of San Francisco Planning Code, Article 10, Preservation of Historical Architectural, and Aesthetic Landmarks (Attachment 7).

VII. PERSONNEL QUALIFICATIONS STANDARDS

- A. The DoN shall ensure that all historic preservation work pursuant to this MOA, including but not limited to the planning and physical rehabilitation of historic properties is carried out by or under the direct supervision of a

1 person or persons meeting, at a minimum, the Qualification Standards in
2 the appropriate disciplines.
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6 **VIII. DOCUMENT REVIEW AND COMMENT**
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8 A. The SHPO shall be afforded forty-five (45) days after receipt to comment
9 on any documentation submitted by the Navy as a result of consultation
10 efforts or as a result of implementation of this MOA. Should the SHPO
11 decline to participate or fail to respond within forty-five (45) days to a
12 written request for comments, the DoN may assume the SHPO's
13 concurrence in the DoN's proposed action.
14

15 **IX. REPORTING:**
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17 A. Until the terms of this MOA have been fulfilled and /or the MOA has been
18 terminated, the DoN shall provide a written annual status report to all
19 other parties.
20

21 1. The annual report shall be submitted by December 15th of each
22 year and, at a minimum, shall address the following topics:
23

- 24 a. Status of the nomination of the Senior Officers Quarters
25 Historic District (Yerba Buena Island) and those other
26 buildings being nominated by DoN.
- 27 b. Discussion of problems or unanticipated issues related to
28 management of historic properties during the previous year,
29 including proposals for resolution of such problems and
30 issues.
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33 **X. DISCOVERIES**
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35 A. Buried cultural materials may be present on the leased properties. If such
36 materials are encountered by the City at NSTI prior to conveyance, the
37 City shall immediately notify the DoN.
38

39 1. The City shall stop work immediately and notify the DoN so that
40 the DoN can initiate consultation with the SHPO. The City shall
41 not proceed with any work without the approval of the DoN.
42

43 2. If the newly discovered property has not previously been included
44 in, or determined eligible for inclusion in, the National Register,
45 the DoN may assume that the property is eligible for purposes of
46 this MOA. Otherwise, the DoN may also proceed through the

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process outlined in 36 CFR 800.4 for the identification of historic properties.

3. The DoN will notify the SHPO at the earliest possible time and consult to develop actions that will take into account any effects of the undertaking on any property assumed, or determined pursuant to 36 CFR 800.4, to be National Register eligible.
4. The DoN will notify the SHPO of any time constraints, and the DoN and the SHPO will mutually agree upon time frames for this consultation.
5. The DoN will provide the SHPO with written recommendations that take the effects of the undertaking into account.
 - a. If the SHPO does not object to the DoN's recommendations within the agreed upon time frame, the DoN will modify the scope of work as necessary to implement its recommendations. The DoN may then authorize the action to proceed.

XI. RESOLUTION OF OBJECTIONS

- A. Should any party object to the manner in which the terms of this MOA are implemented, to any action carried out or proposed with respect to implementation of the MOA, or to any documentation prepared in accordance with and subject to its terms, the DoN shall immediately consult with all other parties for no more than thirty (30) days to resolve the objection. If the objection is resolved through such consultation, the action subject to dispute may proceed in accordance with the terms of that resolution. If, after initiating such consultation, the DoN determines that the objection cannot be resolved through consultation, the DoN shall forward all documentation relevant to the objection to the Council, including the DoN's proposed response to the objection, with the expectation that the Council will respond within thirty (30) days after receipt of such documentation:
 1. Advise the DoN that the Council concurs in the DoN's proposed response to the objection, whereupon the DoN will respond to the objection accordingly; or
 2. Provide the DoN with recommendations, which the DoN will take into account in reaching a final decision regarding its response to the objection; or

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3. Notify the DoN that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The DoN shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110 (1) of the NHPA.
 4. Should the Council not exercise one of the above options within 30 days after receipt of all pertinent documentation, the DoN may assume the Council's concurrence in its proposed response to the objection.
 5. The DoN shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection. The DoN's responsibility to carry out all actions under this agreement that are not the subjects of the objection will remain unchanged.

18 B. At any time during implementation of this MOA, should an objection
19 pertaining to such implementation be raised by a member of the public,
20 the DoN shall notify in writing the other parties and take the objection into
21 account. The DoN shall consult with the objector and, if requested by the
22 objector, consult with any or all of the other parties to this MOA with
23 respect to the objection. The time frame for such consultation shall be
24 reasonably determined by the DoN. The DoN will render a decision
25 regarding the objection and notify all parties hereunder of its decision in
26 writing within a reasonable period of time following closure of this
27 consultation period. In reaching its decision, the DoN will take all
28 comments from the parties into consideration. The DoN's decision
29 regarding resolution of the objection will be final.

30
31 C. The DoN shall provide the SHPO and the Council, when Council
32 comments have been issued hereunder, and any parties that have objected
33 pursuant to paragraph B., above, with a copy of any final written decision
34 regarding any objection.

35
36 D. The DoN may authorize any action subject to objection under this
37 stipulation to proceed after the objection has been resolved in accordance
38 with the terms of this stipulation.

39
40 **XII. AMENDMENTS TO THE MOA**

41
42 A. If any party believes that this MOA should be amended, that party may at
43 any time propose amendments, whereupon the parties will consult to
44 consider the amendment pursuant to 36 CFR § 800.6(c)(7) and §
45 800.6(c)(8).
46

1 B. This MOA may be amended only upon the written concurrence of the
2 signatory parties and the invited signatory party.
3
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5 **XIII. TERMINATION**
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7 A. This MOA may be terminated only by either signatory party or by the
8 invited signatory party. If this MOA is not amended as provided for in
9 Stipulation XII., or if any of these parties proposes termination of this
10 MOA for other reasons, the party proposing termination shall in writing
11 notify all other parties, explain the reasons for proposing termination, and
12 consult with the parties for no more than 30 days to seek alternatives to
13 termination.
14

- 15 1. Should such consultation fail, the signatory party or the invited
16 signatory party proposing termination may terminate this MOA by
17 promptly notifying all other parties in writing.
18
- 19 2. Termination hereunder shall render this MOA without further force
20 or effect. Should this MOA be terminated before all historic
21 properties covered by this MOA have been conveyed out of federal
22 ownership or before the DoN, in consultation with all other parties
23 has determined that all of its terms have been fulfilled, then
24 beginning with the date of termination the DoN shall do the
25 following:
26
 - 27 a. Promptly consult with all other parties to this MOA to
28 develop a new agreement pursuant to 36 CFR Part 800.
29
 - 30 b. Ensure that until a new agreement is executed for the
31 undertaking, that the DoN will not take or sanction any
32 action or make an irreversible commitment that would
33 result in an adverse effect or foreclose alternatives that
34 could avoid or mitigate the adverse effect on historic
35 properties until the consulting process has been completed.
36

37 **XIV. DURATION OF THE MOA**
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39 A. Unless it is terminated pursuant to Stipulation XIII above, this MOA shall
40 remain in effect until all stipulations have been fulfilled as determined by
41 the DoN in consultation with all the other parties, or until such time as the
42 historic properties covered by this MOA are no longer under federal
43 ownership, whichever occurs first. Upon a determination by the DoN that
44 either of these conditions has been met, this MOA will terminate and have
45 no further force or effect. The DoN will promptly provide the other parties
46 to this MOA with written notice of its determination and of termination of
47 this MOA.

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XV. ANTI-DEFICIENCY ACT

- A. All requirements set forth in this MOA requiring the expenditure of DoN funds are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. Section 1341).
 - I. No obligation undertaken by the DoN under the terms of this MOA shall require or be interpreted to require a commitment to expend funds not appropriated for a particular purpose.
- B. If the DoN cannot perform any obligation set forth in this MOA because of the unavailability of funds, the DoN and the SHPO intend that the remainder of the MOA be executed.
 - I. Any obligation under the MOA, which cannot be performed because of the unavailability of funds, must be renegotiated between the DoN and the SHPO.

EXECUTION OF THIS MEMORANDUM OF AGREEMENT by the DoN and SHPO, its transmittal by the DoN to the Council in accordance with 36 CFR 800.6(b)(1)(iv) and subsequent implementation of its terms, shall be evidence pursuant to 36 CFR 800.6(c), that this Memorandum of Agreement is an agreement with the Council for purposes of Section 110(1) of the NHPA, and shall further evidence that the DoN has afforded the Council an opportunity to comment on the "leasing and disposal" of NSTI and its effects on historic properties, that the DoN has taken into account the effects of the undertaking on historic properties, and that the DoN has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations codified at 36 CFR Part 800.

1 SIGNATORY PARTIES:

2 UNITED STATES DEPARTMENT OF THE NAVY.

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4
5 BY: D.S. Bianchi Date: 2 June 03
6 D.S. BLANCHI
7 Captain, CEC, USN Commanding Officer,
8 Engineering Field Activity West
9

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11 CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

12
13 BY: John D. Mellon Date: 2 June 03
14 DR. KNOX MELLON
15 State Historic Preservation Officer
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19
20 INVITED SIGNATORY PARTY:

21 CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

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23
24 BY: _____ Date: _____
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26 City of San Francisco
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31 CONCURRING PARTIES:

32 BAY MIWOK BAND

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34
35 BY: _____ Date: _____
36 KATHERINE FROLINDA PEREZ
37 Bay Miwok Band
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40 CALIFORNIA PRESERVATION FOUNDATION

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42 BY: _____ Date: _____
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44 California Preservation Foundation
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1 **SAN FRANCISCO ARCHITECTURAL HERITAGE**

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3 **BY: _____ Date: _____**

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5 **San Francisco Architectural Heritage**

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