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

STIPULATIONS

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

I. NATIONAL REGISTER NOMINATIONS

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

1. The Senior Officers Quarters Historic District (Yerba Buena Island); as follows:
   (a) Quarters 1 through 7
   (b) Building 83
   (c) Building 205, and
   (d) Building 230

2. Quarters 10 (Yerba Buena Island) Officers Quarters
3. Building 267 (Yerba Buena Island) Garage to Building 10
4. Building 262 (Yerba Buena Island) The Torpedo Building
5. Building 1 (Treasure Island), Administration Building, Golden Gate Exposition
6. Building 2 (Treasure Island), Hall of Transportation, Golden Gate Exposition
7. Building 3 (including Building 111) (Treasure Island), Palace of Fine and Decorative Arts and Annex, Golden Gate Exposition

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

II. ARCHAEOLOGY

A. The DoN completed an inventory of the archeological resources located on the former NSTI. The potential Archeological Sensitive Zones were identified in the Archeological Resource Inventory and Assessment of Naval Station Treasure Island Disposal and Reuse Project, San Francisco County, California, June 1997 and are depicted in Attachment 4.
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...
Bay Bridge Seismic Retrofit. As a result of these actions, this
MOA does not apply to the historic properties which are located
within the former NSTI and which are now owned by CALTRANS
(see Attachment 2). Such properties include:

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

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

III. HISTORIC ARTIFACTS AND RECORDS

A. DoN-owned historic artifacts and records that were included in the
   Treasure Island Naval and Marine Corps Museum will remain the
   responsibility of the Director of the Naval Historical Center, Washington
   Navy Yard, District of Columbia.

B. The DoN has coordinated the disposal of Naval Station Treasure Island
   photographs with the National Archives Pacific-Sierra Region, San Bruno,
   and will transfer them to the National Archives from the DoN’s
   Caretaker Site Office upon completion of preservation measures.

C. The DoN has turned over to the City Department of Public Works plans,
   building drawings and construction photographs that were in the
   possession of the Naval Station Treasure Island Staff Civil Engineer’s
   Office.

D. Financial and administrative records were transferred to Naval Station San
   Diego and Naval Base San Diego, respectively, because these facilities
   assumed operation responsibilities for NSTI at closure.

IV. RECORDATION

A. DoN shall ensure that the non-archaeological historic properties listed in
   Stipulation I.A. of this MOA, with the exception of Building 1 (Treasure
Island) and Building 262 (Yerba Buena Island), are recorded prior to disposition from Federal ownership.

1. Buildings 1 and 262 are called out in the City’s Naval Station Treasure Island Reuse Plan (June 1996) as being priorities for preservation.

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

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

V. LICENSING AND LEASING OF HISTORIC PROPERTIES

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

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

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

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

a. If the DoN determines that the proposed work does not and cannot be modified to conform to the Rehabilitation Standards, the DoN may either reject the proposed work or consult pursuant to 36 CFR Part 800.
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
person or persons meeting, at a minimum, the Qualification Standards in the appropriate disciplines.

VIII. DOCUMENT REVIEW AND COMMENT

A. The SHPO shall be afforded forty-five (45) days after receipt to comment on any documentation submitted by the Navy as a result of consultation efforts or as a result of implementation of this MOA. Should the SHPO decline to participate or fail to respond within forty-five (45) days to a written request for comments, the DoN may assume the SHPO’s concurrence in the DoN’s proposed action.

IX. REPORTING

A. Until the terms of this MOA have been fulfilled and/or the MOA has been terminated, the DoN shall provide a written annual status report to all other parties.

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

   a. Status of the nomination of the Senior Officers Quarters Historic District (Yerba Buena Island) and those other buildings being nominated by DoN.

   b. Discussion of problems or unanticipated issues related to management of historic properties during the previous year, including proposals for resolution of such problems and issues.

X. DISCOVERIES

A. Buried cultural materials may be present on the leased properties. If such materials are encountered by the City at NSTI prior to conveyance, the City shall immediately notify the DoN.

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

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

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

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

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

XII. AMENDMENTS TO THE MOA

A. If any party believes that this MOA should be amended, that party may at any time propose amendments, whereupon the parties will consult to consider the amendment pursuant to 36 CFR § 800.6(c)(7) and § 800.6(c)(8).
B. This MOA may be amended only upon the written concurrence of the
signatory parties and the invited signatory party.

XIII. TERMINATION

A. This MOA may be terminated only by either signatory party or by the
invited signatory party. If this MOA is not amended as provided for in
Stipulation XIII., or if any of these parties proposes termination of this
MOA for other reasons, the party proposing termination shall in writing
notify all other parties, explain the reasons for proposing termination, and
consult with the parties for no more than 30 days to seek alternatives to
termination.

1. Should such consultation fail, the signatory party or the invited
signatory party proposing termination may terminate this MOA by
promptly notifying all other parties in writing.

2. Termination hereunder shall render this MOA without further force
or effect. Should this MOA be terminated before all historic
properties covered by this MOA have been conveyed out of federal
ownership or before the DoN, in consultation with all other parties
has determined that all of its terms have been fulfilled, then
beginning with the date of termination the DoN shall do the
following:

a. Promptly consult with all other parties to this MOA to
develop a new agreement pursuant to 36 CFR Part 800.

b. Ensure that until a new agreement is executed for the
undertaking, that the DoN will not take or sanction any
action or make an irreversible commitment that would
result in an adverse effect or foreclose alternatives that
could avoid or mitigate the adverse effect on historic
properties until the consulting process has been completed.

XIV. DURATION OF THE MOA

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

   1.  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.

   1.  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.
SIGNATORY PARTIES:

UNITED STATES DEPARTMENT OF THE NAVY.

BY: D.L. Bianchi  Date: 2 Jun '03
D.L. Bianchi  Captain, CFC, USN Commanding Officer, Engineering Field Activity West

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY:  Date: 2 Jun '03
Dr. Knop Mello
State Historic Preservation Officer

INVITED SIGNATORY PARTY:

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

BY:  Date:  
City of San Francisco

CONCURRENCE PARTIES:

BAY MIWOK BAND

BY:  Date:  
Katherine Frouhda Perez
Bay Miwok Band

CALIFORNIA PRESERVATION FOUNDATION

BY:  Date:  
California Preservation Foundation
SAN FRANCISCO ARCHITECTUAL HERITAGE

BY: ________________________ Date: __________

San Francisco Architectural Heritage