

**MEMORANDUM OF AGREEMENT
BETWEEN USDOT/MARITIME ADMINISTRATION AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE DISPOSITION OF THE
EX-COAST GUARD ICEBREAKER *GLACIER***

Whereas, the Maritime Administration, an agency of the U.S. Department of Transportation, maintains the National Defense Reserve Fleet (NDRF) of seagoing, primarily non-combatant vessels for use in national emergencies, to assist the U.S. military in meeting its needs, and for those other purposes described in the Merchant Ship Sales Act of 1946, as amended (50 U.S.C. App. §1735 *et seq.*); and

Whereas, the National Maritime Heritage Act, as amended (16 U.S.C. §5405), legally obligates the Maritime Administration to dispose of all non-retention vessels in the NDRF; and

Whereas, the ex-Coast Guard Cutter *Glacier* is a non-retention vessel in the NDRF currently located at the Suisun Bay Reserve Fleet, Benicia, CA; and

Whereas, the California State Historic Preservation Office (SHPO) advises and assists the Maritime Administration in carrying out its section 106 responsibilities pursuant to the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. §470 *et seq.*); and

Whereas, in consultation with the SHPO, the Maritime Administration has determined that the *Glacier* is eligible for listing on the National Register of Historic Places (NRHP); and

Whereas, the Merchant Marine Act of 1936 as amended (46 U.S.C. §57103), authorizes the Maritime Administration to afford qualified public and non-profit organizations the opportunity to obtain, via donation, obsolete ships from the NDRF for use as memorials and/or in other non-commercial enterprises; and

Whereas, from 2001 through 2007, the Maritime Administration listed the *Glacier* as a vessel available for donation through the Maritime Administration's Ship Donation Program by the authority granted in the Merchant Marine Act of 1936, as amended (46 U.S.C. 57103); and

Whereas, the Maritime Administration, pursuant to 36 C.F.R. §800.2(c)(5) has involved the Glacier Society as a potential donee for the *Glacier* as a memorial ship since 2001 but did not receive a viable application by the December 31, 2007 deadline; and

Whereas, as of the date of this agreement, the Maritime Administration has not received a viable donation request, business plan, or conveyance plan from any other qualified organization for the *Glacier*; and

Whereas, beginning in September 2005, for a period of 90 days, the Maritime Administration solicited public comments through its website, through electronic mailings to organizations and individuals in the maritime history community and other interested parties, and through newspaper and magazine advertisements, regarding its proposed disposal of *Glacier* and the Maritime Administration received no substantive comments; and

Whereas, the Maritime Administration will procure the services of a ship scrapping contractor to completely dismantle the *Glacier* forthwith; and

Whereas, the Maritime Administration has determined that this undertaking will have an adverse effect upon those qualities of the *Glacier* that qualify it for listing on the NRHP; and

Whereas, the Maritime Administration has consulted with the SHPO pursuant to the Advisory Council on Historic Preservation's (ACHP) regulations (36 C.F.R. Part 800) implementing Section 106 of the NHPA to seek ways to avoid, minimize, or mitigate any adverse effects of this undertaking; and

Whereas, in accordance with 36 CFR 800.6(a)(1), the Maritime Administration has notified the ACHP of the adverse effect and requested ACHP participation and the ACHP has declined to participate; and

NOW THEREFORE, the Maritime Administration 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.

AUTHORITIES:

The Historic Preservation Act (16 U.S.C. §470 *et seq.*) requires that federal agencies, through consultation with State Historic Preservation Officers, minimize, mitigate or avoid adverse effects that their undertakings have on historic properties.

The Maritime Administration is legally authorized to dispose ships not assigned to the Ready Reserve Force in accordance with 46 U.S.C. §57102, 16 U.S.C. §5405(c), and Section 3502 of Public Law 106-398, as amended.

STIPULATIONS

The Maritime Administration shall ensure that the following stipulations are implemented:

Stipulation I

Mitigation

A. The Maritime Administration shall ensure that *Glacier* is recorded in accordance with the Interagency Agreement with the United States National Park Service (NPS) (HAER) (Attachment 1) in its present configuration.

B. The Maritime Administration shall, within twelve (12) months of the date of the last signature on this Agreement, submit the draft documentation to the SHPO.

C. The SHPO shall have thirty (30) days upon receipt of the complete documentation package in which to comment. If the SHPO does not respond within thirty (30) calendar days, the Maritime Administration will presume that the SHPO has no comments and accepts the documentation package as a final report.

D. The Maritime Administration shall provide the SHPO and the Library of Congress with a complete set of the final documentation package within eighteen (18) months of the date of the last signature on this Agreement.

Stipulation II

Monitoring and Reporting

Each year following the execution of this Agreement until it expires or is terminated, the Maritime Administration shall provide all parties to this Agreement a summary written report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Maritime Administration's efforts to carry out the terms of this Agreement.

Stipulation III

Post-Review Discoveries

In the event that previously unidentified resources are discovered, the Maritime Administration shall comply with the provisions of 36 C.F.R. §800.13.

Stipulation IV

MOA Amendments, Disputes, and Termination

A. *Amendments.* Either party to this Agreement may propose to the other party in writing that it be amended, whereupon the parties will consult in accordance with 36 C.F.R. §800.6(c)(7) to consider such an amendment.

B. *Disputes.* Should the SHPO object to any action carried out or proposed by the Maritime Administration with respect to the implementation of this Agreement, the Maritime Administration shall consult with the SHPO to resolve the objection. If the Maritime Administration after initiating such consultation determines that the objection cannot be resolved the Maritime Administration shall forward documentation relevant to the objection to the ACHP, including the Maritime Administration's proposed response to the objection. Within forty-five (45) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Advise the Maritime Administration that the ACHP concurs with the Maritime Administration's proposed final decision, whereupon the Maritime Administration shall respond accordingly;
2. Provide the Maritime Administration with recommendations, which the Maritime Administration shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the Maritime Administration that the objection will be referred to the ACHP membership for formal comment and proceed to refer the objection and comment within forty-five (45) days. The resulting comment shall be taken into account by the Maritime Administration in accordance with 36 C.F.R. §800.7(c)(4).

Should the ACHP not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the Maritime Administration may assume the ACHP's concurrence in its proposed response to its objections.

The Maritime Administration shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Maritime Administration's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

C. *Termination of MOA.* Either party to this Agreement may terminate it by providing sixty (60) days notice in writing to the other party, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination of this Agreement by the SHPO, the Maritime Administration shall comply with the provisions of 36 C.F.R. §800.6(c)(8).

Stipulation V Termination of Consultation

If, after consulting to resolve adverse effects pursuant to Stipulation IV of this Agreement, the Maritime Administration or the SHPO determines that further consultation will not be productive, then either signatory may terminate consultation in

accordance with the notification requirements and process prescribed by 36 C.F.R. §800.7(a).

Stipulation VI

Duration

This Agreement shall be null and void if its terms are not carried out within five (5) years from the date of the last signature on this Agreement. Prior to such time, the Maritime Administration may consult with the SHPO to reconsider the terms of the Agreement and amend it in accordance with Stipulation IV. A.

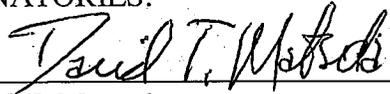
The Stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs the Maritime Administration's ability to implement the Stipulations of this MOA, the Maritime Administration will consult in accordance with the Amendment and Termination procedures found in Stipulation IV of this MOA. Each party to this MOA shall be liable for the acts or omissions of its own employees.

EXECUTION of this MEMORANDUM OF AGREEMENT

Execution of this Memorandum of Agreement by the Maritime Administration and the SHPO and implementation of its terms evidences that the Maritime Administration has taken into account the effects of the project on historic properties and afforded the ACHP an opportunity to comment. The Agreement shall become effective on the date of the last signatory to sign this Agreement.

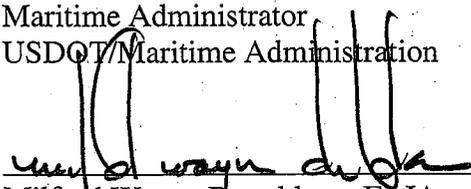
In Witness whereof, the parties hereto have caused their respective names to be signed by their duly authorized officers:

SIGNATORIES:



David T. Matsuda
Maritime Administrator
USDOT/Maritime Administration

Date 7/26/2011



Milford Wayne Donaldson, FAIA
California State Historic Preservation Officer

Date 1 AUG 2011