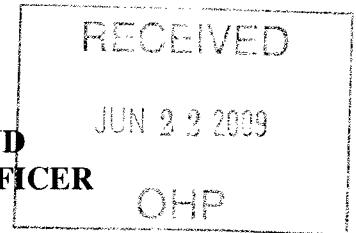


**MEMORANDUM OF AGREEMENT
BETWEEN USDOT/MARITIME ADMINISTRATION AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE DISPOSITION OF THE
OBSOLETE VESSEL *AMERICAN RACER***



Whereas, the Maritime Administration (“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. 1735-1745); 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 *American Racer* 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 16 U.S.C. §470 (NHPA); and

Whereas, in consultation with the SHPO, the Maritime Administration has determined that the *American Racer* 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, since June 2005, the Maritime Administration has listed the *American Racer* 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, of the date of this agreement, the Maritime Administration has not received a donation request, business plan, or conveyance plan from a qualifying organization for the *American Racer*; 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 *American Racer* 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 *American Racer* forthwith; and

Whereas, the Maritime Administration has determined that this undertaking will have an adverse effect upon those qualities of the *American Racer* 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 CFR 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.

STIPULATIONS

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

Stipulation I Mitigation

- A. Prior to disposal of the vessel, the Maritime Administration shall ensure that the *American Racer* 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 for review and comment prior to removing *American Racer* from the NDRF.
- C. The SHPO shall have thirty (30) days upon receipt of the complete documentation package in which to respond. If the SHPO does not respond within thirty (30) days the Maritime Administration may proceed with the undertaking according to the terms of this Agreement.

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.

E. The following items of historical interest have already been removed from *American Racer* over the years, and when possible have been or will be loaned to a suitable museum or historical vessel: bell; builder's plate; engine order telegraph; azimuth circle and; clinometer.

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 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 CFR § 800.13.

Stipulation IV
MOA Amendments, Disputes, and Termination

A. *Amendments.* Either party to this Agreement may propose to the other party that it be amended, whereupon the parties will consult in accordance with 36 CFR § 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 in 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 CFR § 800.7(c)(4).
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.
5. 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 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 CFR § 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 CFR § 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.

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

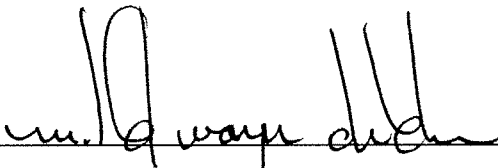
taken into account the effects of the project on historic properties and afforded the ACHP an opportunity to comment. The Agreement shall become effective on the date of the last signatory to sign this Agreement.

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

SIGNATORIES:

 _____ Date JUN 19 2009

Kevin Tokarski
Associate Administrator for National Security
USDOT/Maritime Administration

 _____ Date 22 JUN 2009

Milford Wayne Donaldson, FAIA
California State Historic Preservation Officer