

MEMORANDUM OF AGREEMENT
AMONG
COMMANDER, NAVY REGION NORTHWEST,
AND
THE OREGON STATE HISTORIC PRESERVATION OFFICE,
THE CONFEDERATED TRIBES OF UMATILLA INDIAN RESERVATION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING THE
MILITARY READINESS ACTIVITIES AT
NAVAL WEAPONS SYSTEMS TRAINING FACILITY BOARDMAN,
MORROW COUNTY, OREGON
2015

WHEREAS, Commander, Navy Region Northwest (hereinafter the “Navy”) as landowner and operator of the Naval Weapons Systems Training Facility (NWSTF) Boardman, in Morrow County, Oregon and the associated special use airspace currently conducts military training operations, to include aircraft overflights and related air and ground operations; and

WHEREAS, the Navy anticipates the continuation of current operations, increases in the number and frequency of ground and air operations, and the construction and operation of new ranges for proposed military readiness activities (hereinafter the Undertaking) to include the Oregon Military Department’s use of NWSTF Boardman; and

WHEREAS, the Navy is preparing an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) in support of the proposed Undertaking which analyzes the environmental impacts of continuing and expanded operations on NWSTF Boardman; and

WHEREAS, the preferred alternative analyzed in the EIS includes the continuation of current operations, increases in the number and frequency of ground and air operations, and the construction and operation of new ranges described in the Military Readiness Activities at NWSTF Boardman EIS; and

WHEREAS, the Navy is the lead agency for compliance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, the Navy has identified two Areas of Potential Effect (APEs) per 36 CFR §800.16(d) that are:

- a) APE 1- the boundary of 19 non-contiguous project sites within NWSTF Boardman installation boundary where direct ground disturbance could occur, and
- b) APE 2- the aggregate external boundary of all special use airspace (existing or proposed) that supports low altitude military training where aircraft are allowed to train from surface or 500 feet and up; and

WHEREAS, the Navy identified historic properties in the APEs and consulted with the Oregon State Historic Preservation Office (SHPO) in accordance with 36 CFR Part 800; and

WHEREAS, the Navy in furtherance of their Section 106 obligations to identify effects on properties eligible or potentially eligible for inclusion in the National Register of Historic Places (NRHP) within the APEs solicited a Traditional Use Survey of NWSTF Boardman from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR); and

WHEREAS, the CTUIR are signatories of the Walla Walla, Cayuse, and Umatilla Treaty of 1855, which ceded identified tribal lands in the Territory of Washington and the Oregon Territory to the United States, to include a section thereof which is now known as NWSTF Boardman; and

WHEREAS, the Navy acknowledges the CTUIR's reserved treaty rights related to hunting and gathering and pasturing stock on unclaimed lands in common with citizens; and

WHEREAS, a portion of NWSTF Boardman is open to the public for restricted use and activities; and

WHEREAS, the Navy has consulted with the CTUIR, to identify historic properties of religious and cultural significance eligible for listing on the National Register of Historic Places within the APEs at NWSTF Boardman; and

WHEREAS, the Navy has determined that the undertaking may have an adverse effect on historic properties eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the Navy 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 CTUIR have agreed to consult on this MOA and are Invited Signatory Parties because of their direct relation to the subject matter of the MOA; and

WHEREAS, the Navy, SHPO, and ACHP are each a "Signatory" to this MOA, and CTUIR an "Invited Signatory," hereafter, "Signatories;" and

NOW, THEREFORE, the Navy, SHPO, CTUIR, and ACHP agree that should the Navy decide to implement the Undertaking, the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties, and that these stipulations shall govern all aspects of the Undertaking until this MOA expires or is terminated.

STIPULATIONS

The Navy will ensure that the following stipulations are implemented.

I. Mitigation of Potential Effects of the Undertaking.

- A. The Navy will ensure that all mitigation stipulations will be carried out under the supervision of a cultural resource professional(s) meeting the Secretary of the Interior (SOI) Professional Qualifications as defined in 36 CFR Part 61.
- B. Within one year of execution of this agreement, the Navy, in consultation with the CTUIR, will develop a monitoring plan for known and subsequently identified historic properties at NWSTF Boardman in accordance with Section 110(a) of the NHPA and in Section 2(b) of the Intention and Purpose section of the Archaeological Resources Protection Act (ARPA). The Navy will invite tribal participation to assess the potential for unforeseen effects of increased noise and vibration on the integrity and character of the historic properties.
- C. Within six months of the execution of this agreement, the Navy, in consultation with the CTUIR, will develop education and training materials for personnel who manage or use the range as follows:
 1. The Navy will provide personnel stationed at NWSTF Boardman with cultural resources protection materials highlighting confidentiality requirements under Section 304 of the NHPA and Section 9(a) of ARPA and identifying nonspecific locations of archaeological and cultural sensitivity.
 2. The Navy will share available information on local ARPA Law Enforcement Training opportunities to personnel stationed at NWSTF for the purpose of improving and increasing monitoring and protection of known and subsequently identified historic properties.
 3. The Navy will prepare education materials to be included in the NWSTF Boardman Unexploded Ordnance (UXO) brief for all range users to improve the physical security and integrity of known and subsequently identified historic properties.
- D. Within four years of this agreement, in consultation with the CTUIR:
 1. The Navy will install signage in the public access area to promote the protection of historic properties.
 2. The Navy will complete an initial review of the perimeter fencing surrounding the public access area to identify needed repairs and maintenance. Annual reviews will commence within one year after the completion of all initially identified repairs in order to maintain the integrity of the fence line.
 3. The Navy will reroute the portion of the road that bisects 35MW105.

- E. In the event the Navy determines hunting and/or gathering are appropriate uses on all or some portions of NWSTF Boardman, the Navy will work with the CTUIR to formalize an access plan for the facility.
- F. The CTUIR may request the Navy refrain from training during specific times to accommodate the performance of cultural activities in the public access area.
 - 1. The Navy will consider the CTUIR's request and make accommodations when training requirements permit.
 - 2. All requests will be submitted to the NWSTF Boardman Cultural Resources Program Manager (CRPM) no later than ten (10) business days prior to the desired date.
 - 3. The Navy will forward a response within five (5) business days after receipt of the request.

ADMINISTRATIVE PROVISIONS

II. DISPUTE RESOLUTIONS

- A. The Navy will consult directly with any Signatory Party submitting a written objection regarding proposed or completed Navy actions over which a Signatory Party has jurisdiction.
- B. If after initiating notification and engaging in consultation with the Navy, the objecting Signatory Party determines that the objection cannot be resolved, the Navy will forward all relevant documentation, to include the Navy's proposed response, to the ACHP.
- C. Within thirty (30) calendar days after receipt of all relevant documentation, the ACHP will exercise one of the following options;
 - 1. Concur with the Navy's proposed response; or
 - 2. Disagree with the Navy's proposed response and provide recommendations for amending the proposed response. The Navy will consider the recommendations before making a final decision on how to proceed; or
 - 3. Determine that further consultations will not be productive and provide a written consultation termination notice to the Navy.
 - 4. If the ACHP has not responded within the thirty (30) day timeframe, the Navy may make a final decision on the objection and proceed.

VIII. ANTI-DEFICIENCY ACT

- A. The Anti-Deficiency Act, 31 U.S.C. § 1341, prohibits federal agencies from incurring an obligation of funds in advance of or in excess of available appropriations. Accordingly, the Signatory Parties agree that any requirement for the obligation of funds arising from the terms of this MOA will be subject to the availability of appropriated funds for that purpose. The Stipulations contained in this MOA will not be interpreted as requiring the obligation or expenditure of funds in violation of the Anti-Deficiency Act.
- B. If compliance with the Anti-Deficiency Act impairs the Navy's ability to implement the Stipulations of this MOA, the Navy will consult with the Signatory Parties to determine alternative means to ensure full implementation of this MOA. If an amendment is necessary, the provisions of Stipulation IX will be followed.

IX. AMENDMENTS

- A. Any Signatory Party may propose an amendment.
- B. The amendment process starts when a Signatory notifies the other Signatory Parties in writing requesting an amendment. The notification will include the proposed amendments and the reasons supporting them. All Signatory Parties will consult to consider any proposed amendment.
- C. An amendment will not take effect until it has been agreed to and executed in writing by all Signatory Parties and submitted to the ACHP.

X. EFFECTIVE DATE AND TERMINATION

- A. Any Signatory Party of this MOA may terminate it in part or in whole by providing thirty (30) days notice to the other parties, providing that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that will avoid termination. In the event of full termination, all Signatory Parties will comply with 36 CFR § 800 regarding individual projects included in the Undertaking. In the event only a portion of the MOA is terminated, the remainder of the Stipulations will remain in effect and the MOA will be amended to reflect the change in accordance with this document.
- B. This MOA will become effective upon execution by all Signatory Parties and will remain in effect for ten (10) years unless terminated earlier.

XI. COORDINATION

- A. The Navy will ensure that each Signatory Party is provided a copy of the fully executed MOA.

XII. Post Review Discovery

A. If during the performance of the Undertaking or in the course of the duration of the MOA previously unknown historic properties are discovered, then:

1. Any activities within the immediate area will be halted and reasonable measures to avoid or minimize impacts to the items discovered and surrounding property will be undertaken.
2. The Boardman CRPM will be immediately notified. Within forty-eight (48) hours the SHPO and interested tribes will be contacted via e-mail with the details of the discovery and allowed the opportunity to respond within 7 (seven) business days with recommendations regarding National register eligibility and proposed actions. Activities will not resume in the discovery area until the CRPM or his/her designee provide written authorization, e.g., email.

Upon discovery of human remains, the activity will immediately stop and the Boardman CRPM notified. The CRPM will contact the appropriate authorities and follow the applicable procedures specified in the Inadvertent Discovery Plan.

XIII. SIGNATORY PARTIES

- A. Execution and implementation of the terms of this MOA evidence the fact that the Navy has afforded the ACHP and Signatory Parties an opportunity to comment on this Undertaking, and that the Navy has taken into account the effects of the Undertaking on historic properties.
- B. All the undersigned Signatory Parties certify that they have full authority to represent and bind their respective agency for the purpose of entering into this MOA.

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2015

Signature Page

DEPARTMENT OF THE NAVY

By: _____
J.S. RUTH, Rear Admiral, U.S. Navy
Commander, Navy Region Northwest

Date: _____

By: _____
MICHAEL K. NORTIER
Captain, U.S. Navy
Commander NAS Whidbey Island

Date: _____

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

By: _____
GARY BURKE
Board of Trustees Chairman

Date: _____

OREGON STATE HISTORIC PRESERVATION OFFICE

By: _____
LISA VAN LAANEN
Oregon State Historic Preservation Officer

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date: _____

JOHN M. FOWLER

Executive Director, Advisory Council on Historic Preservation

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