

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF THE NAVY,
AND
THE UNITED STATES DEPARTMENT OF THE INTERIOR
CONCERNING THE TRANSFER OF
DEPARTMENT OF DEFENSE PROPERTIES ON VIEQUES ISLAND
TO THE DEPARTMENT OF THE INTERIOR

I. PURPOSE

This Memorandum of Agreement ("MOA"), between the United States Department of the Navy ("Navy") and the United States Department of the Interior ("Interior"), sets forth the terms and conditions for the transfer to Interior, pursuant to Section 1508 of Title XV of Public Law 106-398, of approximately 3,100 acres of the Naval Ammunition Support Detachment, Vieques, Puerto Rico (NASD Vieques), currently held by the Department of Defense on the western end of Vieques Island, Commonwealth of Puerto Rico. A map and a legal description of the property to be transferred are attached as Exhibit A.

II. BACKGROUND

WHEREAS, Navy is required by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398 to transfer, without reimbursement, to the administrative jurisdiction of the Secretary of the Interior, all Department of Defense (DOD) properties on the western end of Vieques Island, consisting of approximately 3,100 acres, that are designated as Conservation Zones in section IV of the 1983 Memorandum of Understanding between the Commonwealth of Puerto Rico and the Secretary of the Navy; and

WHEREAS, Congress directed that the lands to be transferred to Interior shall be administered as wildlife refuges under the National Wildlife Refuge System Administration Act of 1966; and

WHEREAS, Navy has identified funds for all actions required during the current fiscal year for the environmental remediation of NASD and determined that its future budget requests will provide for the environmental remediation of NASD Vieques as required by applicable law; and

WHEREAS, the entire NASD property is potentially eligible for the National Register of Historical Places (NRHP) as a historic district, and that contributing elements to the district, including several archaeological sites currently listed on the NRHP, are within the property to be transferred to Interior;

NOW, THEREFORE, the parties agree upon the terms and conditions as described herein.

III. DEFINITIONS

"Act" means Title XV of Public Law 106-398, The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Oct. 30, 2000).

For purposes of this agreement only, "contaminants" or "environmental contamination" means any substance, material, or waste which is a (1) hazardous substance, pollutant or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601, et seq.; (2) any substance designated pursuant to 33 USC 1321(b)(2)(A) of the Federal Water Pollution Control Act; (3) any hazardous waste having the characteristics identified under or listed pursuant to 42 U.S.C. 6921 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) has been suspended by Act of Congress); (4) any toxic pollutant listed under 33 USC 1317(a) of the Federal Water Pollution Control Act; (5) any hazardous air pollutant listed under 42 U.S.C. 7412 of the Clean Air Act; (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to 15 USC 2606 of the Toxic Substances Control Act; (7) petroleum and any petroleum product or derivative; (8) any unexploded ordnance, military munitions, weapons, or nuclear or radioactive material, if not otherwise defined as a hazardous substance, pollutant, or contaminant; (9) any other substance, waste, or material which in the future is regulated as hazardous under federal or state (as defined under CERCLA, 42 U.S.C. 9601(27)) law applicable to the transferred lands and that requires a response action as a result of a release or threatened release of such substance, material or waste; and (10) any other substance, material, or waste the release of which the parties jointly agree (or is determined through dispute resolution) requires a response action to protect human health and the environment.

"Interior" means the United States Department of the Interior.

"NASD Vieques" means Naval Ammunition Support Detachment, Vieques, Commonwealth of Puerto Rico.

"Navy" means the United States Department of the Navy.

"Transferred lands" or "transferred property" means the real property transferred by the Secretary of the Navy to the administrative jurisdiction of the Secretary of the Interior, pursuant to section 1508 of Title XV of Public Law 106-398.

IV. NAVY RESPONSIBILITIES

A. Transfer of Administrative Jurisdiction to the Secretary of the Interior. Pursuant to Section 1508 of Title XV of Public Law 106-398, the Secretary of the Navy shall transfer, without reimbursement, to the administrative jurisdiction of the Secretary of the Interior, the Department of the Defense real properties on the western end of the Vieques Island, consisting of a total of approximately 3,100 acres and described in Attachment A, that are designated as

Conservation Zones in section IV of the 1983 Memorandum of Understanding between the Commonwealth of Puerto Rico and the Secretary of the Navy.

B. Continuing Navy Responsibility for Environmental Contamination. With respect to the transferred property, the Navy shall have sole and exclusive federal responsibility to fund and implement any actions (including response actions and associated operation and maintenance) required by applicable law, or by implementing regulations, including but not limited to CERCLA, to address environmental contamination resulting from the activities or presence of the Department of Defense (including entities acting with permission or under the authority of or in a contractual relationship with the Department of Defense) or which is present at the time of transfer by the Secretary of the Navy to the Secretary of the Interior (including contamination subsequently discovered), unless the Department of the Interior caused or contributed to such contamination. Response actions and cleanup standards selected to address environmental contamination shall be subject to and in compliance with applicable environmental laws, including but not limited to CERCLA, and undertaken in a manner consistent with conservation and natural resource uses and the purpose for the transferred property (including the protection of natural resources) and with Interior's natural resource trust obligations or statutory responsibilities.

To the extent permitted by law, the Navy assumes all responsibility for, and shall hold harmless, defend, and indemnify in full Interior from and against any suit, claims, demand or action (including administrative orders), liability, judgment, cost or other fee (including penalties), and liability of any kind, including claims for environmental response costs, personal injury, and property damage arising from or related to any environmental contamination on the transferred lands for which the Navy is responsible.

C. Environmental Baseline Survey and NASD Records. The Navy shall provide Interior with copies of the NASD Vieques Environmental Baseline Survey. The Naval Facilities Engineering Command's Atlantic Division shall transition NASD Vieques records in accordance with Navy and Marine Corps Disposition Manual, SECNAVINST 5212.5D. The Navy and Interior shall identify all NASD Vieques records (e.g., property records, environmental records, historical or cultural resources surveys, etc.) that shall be transferred to Interior, or otherwise preserved or disposed.

D. Information. The Navy shall, in a timely manner, provide Interior with all information concerning environmental investigations, documentation, proposed response actions, or other compliance, closure, maintenance, restoration, or related activity with respect to the Navy's obligations to address environmental contamination on the transferred property.

E. Unexploded Ordnance. The Navy shall install and maintain necessary fencing and post signs warning of unexploded ordnance (UXO) at NASD Vieques at Solid Waste Management Unit No. 4 (Open Burning/Open Detonation Site), and at any other location on the transferred property where such fencing and notification is appropriate. To the extent not provided in the Environmental Baseline Survey, the Navy shall provide to Interior the results of any additional surveys of UXO.

The Navy shall be responsible for conducting additional UXO response activities as necessary to satisfy Interior's uses and mission of the transferred property. Such activities shall be subject to and conducted in accordance with current or future applicable law and regulations, and with the DOD and EPA Interim Final Management Principles for Implementing Response Actions at Closed, Transferring, and Transferred (CTT) Ranges, March 7, 2000, or subsequent agreements. The appropriateness of additional UXO response activities shall be jointly evaluated by the Navy and Interior. The Navy recognizes that no determination has been made at this time by Interior concerning the adequacy of response measures taken or planned by the Navy with respect to UXO on the transferred lands. Any dispute between the Navy and Interior regarding the need for or appropriateness of UXO response activities will be resolved in accordance with paragraph number IX.

F. Continuing Navy Responsibility for Security and Institutional Controls at Contaminated or Remediated Sites: With respect to any areas of the transferred property containing environmental contamination, the Navy shall retain sole and exclusive authority and responsibility to fund and maintain all necessary physical security prior to completion of response activities, and all necessary security measures or institutional controls included in a selected response action (including operation and maintenance of such measures or controls). The Navy shall also retain operations and maintenance responsibility for roads and bridges within the transferred lands that are needed only by the Navy to access its retained facilities. For roads and bridges within the transferred lands that are needed by both the Navy and Interior, the parties shall develop a plan under which the parties share operation and maintenance responsibilities as appropriate.

G. Safety Training. The Navy shall, at no cost to Interior, provide Interior personnel and Interior contractors working on the transferred lands with appropriate on-site safety and first aid training involving the recognition of environmental contamination and shall identify all known locations that may contain environmental contamination.

H. Tort Claims. The Navy shall process, adjudicate and defend all administrative claims and litigation asserted under the Federal Tort Claims Act that arise from any activity of Navy with respect to NASD Vieques or out of any failure of Navy to comply with the terms and conditions of this MOA.

I. Easements and Agreements. The Navy shall not terminate easements to the Puerto Rico Electric Power Authority (formerly known as Puerto Rico Water Resources Authority) consisting of a portion of 43.07 acres for a power line and the Puerto Rico Aqueduct and Sewer Authority consisting of .3940 of an acre for an electric power line prior to transfer of the property. The Navy shall not enter into any other real estate agreements concerning NASD Vieques without the consent of Interior before the transfer.

V. INTERIOR RESPONSIBILITIES

A. Administrative Jurisdiction. Upon execution of this MOA and the acceptance by Interior of the transfer of administrative jurisdiction from the Navy to Interior of the properties identified in Attachment A, Interior shall assume jurisdiction and control of the transferred property in accordance with this MOA.

B. Access to Navy for Response Actions and Environmental Compliance. The Department of the Interior shall provide the Navy with access to the transferred property as may be reasonably required to carry out the Navy's obligations under this MOA.

C. Notification of Contamination. If the Department of the Interior discovers environmental contamination on the transferred lands, it shall notify the Navy of such contamination as soon as reasonably possible after such discovery.

D. Notice and Approval for Ground-Disturbing Activities. Prior to conducting, or authorizing any other entity to conduct, any ground-disturbing activities on the transferred lands where the Navy has imposed land use controls on the use of the land, and where the activities may adversely impact the remedy, Interior shall notify the Navy of the proposed activities. Interior shall then seek from the Navy a certification that the area on which the proposed activities will take place to verify that the proposed activities will not adversely affect the remedy in place or human health or the environment. Following such Navy certification, in the event the proposed activities result in a release or threatened release of environmental contamination related to activities of the Department of Defense, the Navy shall fund and implement all actions required to address the release or threatened release. Interior may, but is not required to, seek Navy certification for ground-disturbing activities on areas not described above, and in such event the terms and conditions of this paragraph shall apply. For purposes of providing a certification under this paragraph, the Navy may rely on existing information if it deems such information adequate to support the certification.

E. Restrictions on Use. Prior to conducting activities or allowing uses of the transferred properties that could interfere with the Navy's obligations to address environmental contamination, Interior shall consult with the Navy. Interior shall not conduct activities or allow uses of the transferred property that will materially interfere with the Navy's compliance with its obligations.

F. DOI Master Title Plats. Interior shall post UXO notifications on the DOI Master Title Plats for the transferred property.

G. Tort Claims. Interior shall process, adjudicate and defend all administrative claims and litigation asserted under the Federal Tort Claims Act that are not the responsibility of the Navy in accordance with paragraph IV.H. of this agreement or occur as a result of any failure of Interior to comply with the terms and conditions of this MOA.

H. Rights Retained by the Navy and Future Disposal. Interior agrees not to take any action contrary to the rights retained by the Navy respecting Mount Pirata and Relocatable Over

the Horizon Radar sites as set out in Exhibit A. Except as otherwise provided by law (including a legislative transfer), Interior shall consult with the Navy prior to disposing of NASD Vieques, or any portion thereof, whether by transfer or conveyance, and shall include in any instruments effecting such transfer or conveyance easements, covenants, or similar provisions sufficient to prevent any derogation of Navy's retained rights required to protect the Navy's Relocatable Over the Horizon Radar and Mount Pirata sites in accordance with Public Law 106-398, Section 1506, and shall not convey any property interests in a manner inconsistent with Section 1506.

I. Power Transmission Easements & Facilities. To the extent required by existing rights, Interior shall allow the construction, installation, maintenance, operation, repair and replacement of transmission lines, poles and appurtenances on, under, over and through NASD Vieques for existing easements referenced in paragraph IV.I of this agreement.

VI. PHYSICAL CONDITION INSPECTION.

Prior to or within 30 days following the transfer, the Navy and Interior shall conduct a physical condition inspection of the transferred lands to document the general physical appearance and condition of the transferred lands at the time of transfer. The Navy and Interior will jointly prepare a report to document their inspection findings.

VII. ENFORCEMENT ACTIONS.

With respect to the transferred property, the Parties agree that any administrative or legal actions necessary to enforce the requirements of applicable laws or regulations concerning environmental contamination for which the Navy has retained responsibility shall be taken against the Secretary of the Navy, and not against the Secretary of the Interior.

VIII. FUNDING.

Nothing in this MOA shall be construed as obligating funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

IX. DISPUTE RESOLUTION.

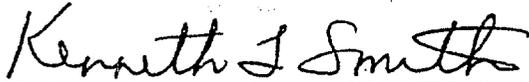
The Parties shall attempt to settle disputes informally. If a dispute arises that is not resolved informally, the Parties shall use applicable procedures or authorities for the resolution of the dispute, which may include but are not limited to those provided in Executive Order 12146 and Executive Order 12580.

X. NO THIRD PARTY RIGHTS

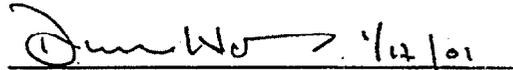
This MOA is intended only to set forth the terms and conditions for the transfer of the property described herein, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by any person against the United States, its agencies, or any other person.

XI. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

This MOA shall become effective as of the date of any transfer under the authority of Section 1508 of Title XV of Public Law 106-398.. Modifications may be proposed at any time by any party, and shall become effective pursuant to the terms of such modifications, as agreed to by the parties. This MOA shall remain in effect until such time as the parties mutually agree to its termination.



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