

**PROGRAMMATIC AGREEMENT AMONG THE U.S. MERCHANT MARINE
ACADEMY, THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING OPERATIONS, MAINTENANCE, AND DEVELOPMENT ACTIVITIES
AT THE U.S. MERCHANT MARINE ACADEMY,
NASSAU COUNTY, NEW YORK**

WHEREAS, the organization known as the U.S. Merchant Marine Academy (USMMA) located in the state of New York contains historic properties, which were listed on the National Register of Historic Places (NHRP) in August 2014, to include the USMMA Historic District (HD or District), which encompasses a group of buildings, structures, and objects of various types (administrative, academic, residential, religious, and athletic/recreational) and listed separately, the William Barstow Mansion; and

WHEREAS, the 42-acre USMMA HD is significant for its support to the war effort during World War II and as a training academy with a mandate “to educate and graduate licensed merchant mariners and leaders of exemplary character who will serve America’s marine transportation and defense needs in peace and war” and for its association with the Gold Coast; and

WHEREAS, the individually listed William Barstow Mansion is significant for its association with the Gold Coast, its owner, and its architecture; and

WHEREAS, USMMA, a federally owned and operated facility, conducts routine undertakings related to the operation, maintenance, and development of the facility, that involve similar and repetitive actions (Project Undertakings), which have the potential to affect historic properties, subject to review under Section 106 of the National Historic Preservation Act (hereafter NHPA), 54 U.S.C. 300101 et seq., and its implementing regulations, 36 C.F.R. § 800; and

WHEREAS, a nomination to the NRHP, titled “*The United States Merchant Marine Academy Historic District*” (October 2014), was undertaken to identify contributing buildings, structures, objects, and landscapes and determined the district is historically significant on a national level under the National Register Criterion A, as a reminder of the “Golden Age” of the late nineteenth and early twentieth centuries, and under the National Register Criterion A and C, for the development of the USMMA and its design by Alfred Hopkins & Associates; and

WHEREAS, a nomination to the NRHP, titled “*William Barstow Mansion*” (October 2014) determined that the William Barstow Mansion is historically significant on a state level under Criterion A as a reminder of the “Golden Age” of the late nineteenth and early twentieth centuries, under Criterion B for its association with William S. Barstow, a prominent industrialist of the era, and under Criterion C for the architecturally significant design of the mansion and garage; and

WHEREAS, USMMA has determined that only select buildings have retained their interior historic character-defining features, including the entire interior of Wiley Hall, the dining hall and entrance vestibules of Delano Hall, the gymnasium portion of O'Hara Hall, the auditorium and entrance hall of Bowditch Hall, and the first floor and staircases of Memorial Chapel within the district, as well as the entire interior of the individually-listed William Barstow Mansion; and

WHEREAS, no archaeological properties eligible for listing in the NRHP have been identified on USMMA property and USMMA has recognized the potential for undiscovered archaeological properties that may need evaluation if discovered; and

WHEREAS, USMMA has determined that the aforementioned Project Undertakings may have the potential to affect properties listed on the NRHP within the USMMA HD or at the Barstow Mansion, and has consulted with the New York State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. § 800; and

WHEREAS, pursuant to the NHPA, USMMA has determined it is appropriate to develop a programmatic agreement (Agreement) to govern the implementation of these Project Undertakings, pursuant to 36 C.F.R. § 800.14(b); and

WHEREAS, USMMA has been provided with an 8-volume *USMMA HD Property Maintenance and Repair Manual (Maintenance and Repair Manual)* and a *Landscape Management Plan for the USMMA (Landscape Management Plan)* prepared by US Army Engineer Research and Development Center – Construction Engineering Research Laboratory (ERDC-CERL), which includes preservation and maintenance guidelines and procedures for conducting work on historic buildings, landscapes, monuments, and memorials to guide operation, repair and maintenance activities under this Agreement within the USMMA HD and which are also relevant to the William Barstow Mansion; and

WHEREAS, USMMA invited the Stockbridge-Munsee Mohican, the Shinnecock Indian Nation, the Delaware Nation, and the Delaware Tribe, federally-recognized Indian Nations/Tribes to participate in the development of this Agreement; and

WHEREAS, the Stockbridge-Munsee Mohican Tribal Historic Preservation Office indicated no known cultural sites at USMMA and opted not to participate; the Delaware Tribe initially expressed an interest but didn't respond to subsequent communications, and the Shinnecock Indian Nation and the Delaware Nation did not respond; and

WHEREAS, USMMA has invited the Unkechaug Indian Nation, a state-recognized Indian Nation to participate as a consulting party and received no response; and

WHEREAS, USMMA has identified no known properties of traditional religious and cultural importance at USMMA; and

WHEREAS, USMMA has invited Nassau County and the Village of Kings Point to participate and did not receive a response; and

WHEREAS, USMMA, pursuant to 36 C.F.R. § 800.14(b)(2)(ii), has provided the public an opportunity to comment on this Agreement through posting the document on the USMMA's website and has considered the recommendations of the public and reviewing agencies into this Agreement; and

WHEREAS, USMMA has developed a concise document describing cultural resources management responsibilities in Appendix C; and

NOW, THEREFORE, USMMA, the SHPO, and the ACHP agree that Project Undertakings at the USMMA shall be implemented in accordance with the following stipulations to consider their effects on historic properties at the USMMA.

DRAFT

STIPULATIONS

USMMA shall ensure that the following stipulations are carried out:

I. Cultural Resources Manager

A. The USMMA Superintendent, as the Agency Official for Section 106 in accordance with 36 C.F.R. § 800.2(a), shall designate a Cultural Resources Manager (hereafter CRM) and shall ensure that the staff person designated as the CRM is assigned responsibility for administering the process outlined in this Agreement. This position can be full-time, part-time, or a collateral duty.

B. USMMA shall ensure the CRM meets the *Secretary of the Interior's Professional Qualification Standards* (Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated]) (hereafter SOI Professional Qualifications). If the CRM does not meet SOI Professional Qualifications and/or these responsibilities are a collateral duty, the CRM shall take one class yearly of cultural resources management training from a place or person that meets the SOI Professional Qualifications.

C. For the purposes of this Agreement, the CRM's responsibilities shall include, but are not limited to:

- (1). Serving as the point of contact with the SHPO, the ACHP, other consulting parties, and the public as appropriate for questions and concerns about historic properties and preservation at USMMA.
- (2). The CRM will review all proposed project documentation for capital improvement projects, as well as major and minor maintenance projects to identify specific Project Undertakings that may be subject to review under the terms of this Agreement or 36 C.F.R. § 800 over a five-year planning cycle.
- (3). Establishing schedules and priorities within the planning cycle for the evaluation and treatment of historic properties that might be affected by Project Undertakings.
- (4). Ensuring that information is available to USMMA senior management and other relevant offices, as well as MARAD and MARAD's Federal Preservation Officer (FPO) on potential adverse effects to historic properties, review requirements, and USMMA's responsibilities under this Agreement, so that adverse effects may be identified and avoided early in the planning process.
- (5). Defining an Area of Potential Effect (APE) for Project Undertakings to ensure that all types of historic properties are identified for each proposed undertaking, and performing reviews, making determinations, and issuing approvals per the terms of this Agreement.
- (6). The designated CRM shall ensure that all identification and evaluation survey documentation and all resource treatment documentation carried out pursuant to the terms of this Agreement be completed by or under the direct supervision of an individual or

individuals who meet SOI Professional Qualifications in the appropriate discipline. The CRM shall ensure that scopes of work for undertakings on buildings and landscapes contributing to the HD listed in Appendix A, or at the William Barstow Mansion include the standards and provisions that contractors competing for work on historic properties at USMMA, shall be pre-qualified based on demonstrated experience in the successful application of the *Secretary of the Interiors Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (Weeks and Grimmer: 1995; 36 C.F.R. § 68); hereafter *Standards*). Contractors shall show past performance in the successful application of the *Standards* for the treatments required in statements of qualifications for bids and proposals.

D. Maintenance and Repair Manual

USMMA agrees to follow the guidelines that are established in the *Maintenance and Repair Manual* (Appendix D). The historic district contains contributing mansions constructed during the Gold Coast Era and Academy buildings constructed from 1942 to 1969. All buildings, especially historic ones, require regular planned maintenance and repair. The most notable cause of historic building element failure and/or decay is not the fact that the historic building is old, but rather it is caused by an incorrect or inappropriate repair and/or basic neglect of the historic building fabric. This maintenance and repair manual compiles as-is conditions of construction materials of buildings with as-is conditions of construction materials of buildings at the Academy. The Secretary of Interior Guidelines on rehabilitation and repair per material are discussed to provide the Academy with a guide to maintain these historic buildings. Materials included in this report are concrete, stucco, wood, brick, metal, electrical, mechanical, roofing, ceramic, glass, and stone. Treatment recommendations for preserving and rehabilitating the materials are provided. Material treatments covered in the *Maintenance and Repair Manual* are also relevant to the Gold Coast Era mansion and garage that comprise the individually-listed William Barstow Mansion.

E. Landscape Management Plan

USMMA agrees to follow the guidelines that are established in the *Landscape Management Plan* (Appendix E). This management plan inventories the existing cultural landscape at USMMA, and includes recommendations for managing the historic landscape in the future. The contributing landscapes are identified in the study and their existing conditions discussed. Treatment recommendations for preserving and rehabilitating the landscapes are provided. This document meets the requirements for federal agencies to address their cultural resources, which are defined as any pre-historic or historic district, site, building, structure, or object. Especially relevant is Section 110 of the NHPA, which requires federal agencies to inventory and evaluate their cultural resources.

F. The designated CRM shall post an electronic copy of this Agreement, the *Maintenance and Repair Manual*, and the *Landscape Management Plan* to the USMMA internal website within three (3) weeks of execution of this Agreement and notify via email all appropriate USMMA personnel involved with carrying out actions under this Agreement within four (4) weeks of execution of this Agreement. The designated CRM will notify new personnel of this Agreement

via email within two (2) weeks of the start of their employment. New notifications via email shall be made within two (2) weeks of amendments or updates to the Agreement.

G. Cyclical inspections

The CRM shall annually inspect buildings to confirm that the preservation and maintenance guidelines are being correctly and successfully implemented, and report any areas of disrepair or other issues to the director of CIP/DPW as necessary.

H. Annual Reporting and Monitoring

(1). On July 1 of each year this Agreement remains in force, USMMA shall prepare and provide, via the chain of command, an Annual Report that reviews the implementation of the terms of this Agreement and determine whether amendments are needed. The Annual Report shall address the following topics:

(a). Problems with implementation or issues encountered during the previous year.

(b). Changes USMMA believes should be made in the implementation of this Agreement.

(c). A list of properties treated under this Agreement during the reporting period, including non-review activities found eligible for the Streamlined Review process.

(d). A list of all USMMA professional training opportunities relative to this Agreement provided during the reporting period and number of participants and organizations.

(e). Management summaries of inadvertent discoveries of all archaeological sites at USMMA during the reporting period, subject to the confidentiality provisions of Stipulation IV of this Agreement.

(f). Two copies of the Annual Report shall be provided to the SHPO.

(2). The ACHP and the SHPO may monitor and review the activities carried out pursuant to this Agreement. USMMA shall cooperate with the SHPO and the ACHP in their monitoring and review responsibilities.

(3). USMMA shall meet with SHPO, ACHP, and the concurring parties as necessary to review the implementation of this Agreement and any amendments that may be proposed.

II. Operations, Maintenance, and Repair Activities

A. USMMA will follow the regular Section 106 process, outlined in Appendix B, for all Project Undertakings except those listed in Stipulation II.B. Standard Section 106 consultation shall be conducted in accordance with 36 C.F.R. § 800 for all undertakings that do not qualify for streamlined review under Stipulation II.B.

(1). Non-routine Project Undertakings

a. The following Project Undertakings affecting buildings shall not be considered routine, and shall require Section 106 consultation in accordance with 36 C.F.R. §800.3 through 6.

(1). Wholesale replacement at contributing buildings within the HD or at the William Barstow Mansion of non-historic windows and doors or roofing that is a character-defining feature with historically compatible windows, doors, or roofing.

(2). Undertakings within character-defining interior spaces, including the entire interiors of Wiley Hall and the William Barstow Mansion, the dining hall and entrance vestibules of Delano Hall, the gymnasium portion of O'Hara Hall, the auditorium and entrance hall of Bowditch Hall, and the first floor and staircases of Memorial Chapel with the exception of select routine maintenance items as outlined in Stipulation II.B(1) c.

(3) Undertakings involving new construction or additions to existing buildings either within or outside the HD and William Barstow Mansion boundaries.

b. The following undertakings affecting the landscape within the boundary of the NRHP-listed USMMA HD and William Barstow Mansion shall not be considered routine, and shall require Section 106 consultation in accordance with 36 C.F.R. §800.3 through 6.

(1). Alterations to circulation patterns, such as the removal or introduction of new paths, roads, or other paved areas.

(2) Introduction of any new paved surfaces or replacement of paved surfaces with a new paving material not matching the historic or existing paving.

(3) Wholesale removal of shrubs, hedges, and trees and conversion of space to an alternate use.

B. Streamlined Review Process

The proposed Project Undertaking must be an activity listed within this section. These undertakings shall be known as “streamlined activities” for purposes of reference. A reminder that most of the USMMA is within the boundary of the HD.

The following undertakings shall not require further SHPO review:

(1). Buildings, Structures and Objects

a. Undertakings involving routine maintenance and repair at non-contributing buildings, structures, and objects within the USMMA HD and at existing buildings, structures, objects outside of the NRHP-boundaries of the USMMA HD and the

William Barstow Mansion.

b. Undertakings involving routine maintenance and repair at interiors of non-contributing buildings or within interior spaces at contributing buildings that have not been identified as character-defining, provided the undertakings do not involve new ground disturbance or any associated exterior work (e.g., penetrations for vents or piping associated with mechanical work).

c. Undertakings involving routine maintenance and repair within character-defining interior spaces in accordance with the recommended procedures in the *Standards*, with further guidance as provided in current publications of the National Park Service, such as the Preservation Briefs (PB) referenced below by their numbers in that publication series (PBs can be found on the Technical Preservation Services webpage on the National Park Service website), including:

- (1) Repair in-kind of existing non-decorative plaster, wallboard, or gypsum board with like materials, installation techniques and finish texture (PB 21).
- (2) Repainting non-decorative interior surfaces when the new paint matches the existing or original color (PB 28).
- (3) Plumbing system repair/replacement in-kind, to include pipes and fixtures in bathrooms and kitchens.
- (4) Heating, ventilation, and air conditioning repair/replacement in-kind including furnaces, pipes, radiators or other heating/air conditioning units (PB 24).
- (5) Repair/replacement in-kind of electrical wiring including lighting, fire alarms, smoke/heat detectors, fire suppression systems, telephones, and local area network.
- (6) Replacement in-kind of insulation.
- (7) Repair or replacement in-kind of structural members and elements.

d. Undertakings involving maintenance, repair, and minor replacement in-kind at exteriors of contributing buildings, structures, and objects in accordance with the recommended procedures in the *Standards*, with further guidance as provided in current PBs referenced below by their numbers. Specific work includes:

- (1) Doors (PB 10):
 - (a). Repair in-kind of existing materials.
 - (b). Replacement when beyond repair and done in-kind to match the existing appearance, material, size, form, and details.
- (2). Window frames and sashes (PB 9, 13, 10):
 - (a). Repair in-kind of window frames by patching, splicing, consolidating or otherwise reinforcing or replacing in-kind those parts that are either extensively deteriorated or missing. No change in the exterior or interior appearance, configuration, or the operation of the window shall result.
 - (b) Replacement when beyond repair and done in-kind to match the existing appearance, material, size, form, and details.

- (c). Installation of storm windows, provided that they conform to the shape and size of historic windows and that the meeting rail coincides with that of the existing sash. Color shall match prime window color; mill finish aluminum is not acceptable.
 - (d). Adjusting counterweights.
- (3). Wood siding, trim, porch decking, porch rails, joists, columns, and stairs (including framing) (PB 10, 45):
- (a). Repair in-kind of siding, trim, or hardware when done in kind to match existing appearance, material, and design.
 - (b). Replacement in-kind of only those elements that are beyond repair when done in-kind to match existing appearance, material, and design.
 - (c). Maintenance of features such as window and door frames, hoodmolds, paneled or decorated jambs and moldings through appropriate surface treatments such as cleaning, rust removal, limited paint removal and reapplication of protective coating systems.
 - (d). Repair in-kind of porches and stairs when done in kind to match existing appearance, materials, and design.
- (4). Window and Door Screens (PB 9, 10): Repair in-kind of existing window and door screens with material to match existing screen wire and screen bead in material, style, size, and finish. If repair of existing screen is not possible, replacement in-kind is allowed.
- (5). Glass (PB 9, 13): Replacement in-kind of broken glass with glass of similar type when no modification or damage to adjacent surfaces will result and replacement does not alter existing window glazing rabbets.
- (6). Roofs (PB 29, 30):
- (a). Repair and limited replacement of roofing and associated underlayment that have deteriorated, when done in kind to match the existing appearance, materials, and design. Adequate anchorage of the roofing material to guard against wind damage and moisture penetration should be provided. Samples of replacement materials need to be reviewed and approved by the CRM.
 - (b) Replacement in-kind of flat roofing and associated underlayment when the roofing material is not considered a character-defining feature.
 - (c). Repair and/or replacement in-kind gutters and down spouts.
- (7). Surfaces (PB 1, 2, 9, 10, 15, 18, 22, 24, 39, 42):
- (a). Painting surfaces when the new paint matches the existing or original color. Damaged or deteriorated paint may be removed to the next sound layer by hand scraping or hand sanding (PB 10).
 - (b). Replacement in-kind or installation of caulking and weather stripping around windows, doors, walls, and roofs (PB 9, 39).
 - (c). Repointing of mortar of like materials, installation techniques and finish texture (PB 2).

- (d). Repair in-kind or removal of fire escapes, vestibules, canopies, awnings, railings, ramps, and other similar additions to historic properties that are not original character-defining elements.
- (e). Removal of exterior wiring, conduit, wiring devices, antennas, transformers, and related electrical systems.
- (f) Limited masonry repair utilizing patching compounds that match the historic masonry in terms of physical and aesthetic characteristics (PB 15, 22, 42). Samples of patching compounds and replacement materials need to be reviewed and approved by the CRM.
- (g) Cleaning masonry that is in good condition with low-pressure water rinses not to exceed 200 PSI (PB 1).

(8). Footings, Foundation and Retaining Walls (PB 2, 15):

- (a). Repair in-kind of existing materials.
- (b). Replacement in-kind of those portions that have deteriorated beyond repair to match the existing appearance, materials, and form. Any associated mortar replacement shall be with a mortar mix that is softer than the surrounding masonry. New mortar joints shall match the existing in color, texture, profile, and width.

(9). Mechanical Work (PB 24):

- (a) Replacement of exterior condenser units or other mechanical systems, with comparable units at the same location and reusing existing building penetrations for related piping and refrigerant lines.
- (b) Repair and cleaning of flues, chimneys, and stacks.

2. Archaeological Resources

No known archaeological sites are located on USMMA land. Digging necessary for utility repair, landscaping repair/maintenance, and foundation repair/maintenance shall not require further SHPO review; however, inadvertent discovery can happen at any point and the designated CRM should be called and follow the requirements under Stipulation IV.

3. Landscape Features and Vegetation

- a. In-kind repair or replacement of street, parking lot, driveway, sidewalk, curb and gutter and storm drainage structure.
- b. In-kind repair or replacement of fencing to match existing material and design in existing locations.
- c. In-kind replacement or repair, and/or removal of utility poles, street and parking lot lighting that are not character defining features of a historic property.
- d. Replacement of annuals and perennials in existing beds in existing bed formations.
- e. In-kind replacement of tree species in same location.

f. Where a tree species or cultivar removed is invasive and is identified as being invasive, it shall not be replaced in-kind but the replacement follows the exceptions given in the *Landscape Management Plan*.

g. Where a tree species is susceptible to disease or insect attack, it may be replaced by a different species or cultivar, in order to comply with sustainable landscaping by decreasing use of pesticides and decreasing management costs. If a resistant cultivar of that species or hybrid is available, it shall be used to replace; where these are not available, a different species may be planted as long as the replacement follows the guidelines given in the *Landscape Management Plan*.

h. If a tree fails to establish after two attempts at planting, that selection may be switched with a replacement that follows the exceptions given in the *Landscape Management Plan*.

i. Removal of trees, shrubs, or other plantings that presents a hazard to people or buildings or greatly impacts the maintenance of a building.

III. Using the Streamlined Review Process

A. Determine if the undertaking is non-routine under II.A or streamlined under II.B. If the undertaking is non-routine, follow the regular Section 106 process as outlined in Appendix B. If the undertaking is streamlined, no SHPO consultation is required and this determination should be documented in an Annual Report prepared by the designated CRM as noted in Stipulation III.B.

B. Document the Determination: An Annual Report of all undertakings reviewed using the Streamlined Review process shall be prepared by the designated CRM in accordance with Stipulation I.H.

IV. Inadvertent Discoveries

A. At the time this Agreement was developed, there were no known archaeological sites. Through the course of routine landscaping activities, if a potentially historic property or human remains are identified, guidelines provided in this section shall be followed. USMMA shall ensure that the provisions in this Stipulation shall be included as a Stipulation of all USMMA operations and contracts involving ground disturbance. Basic procedures and contact information shall be provided to project managers and supervisory contractors for on-site reference.

B. If previously unidentified, or unanticipated effects to historic properties are discovered during excavation for construction, utility maintenance, or for interments, the excavation supervisor shall immediately halt the excavation in the immediate area of the finding and notify the USMMA Director of CIP/DPW and the designated CRM of the discovery and implement interim measures (e.g., surveillance, concealment) to protect the discovery from looting and vandalism. In the event of an inadvertent discovery of human remains, USMMA

will stop work, protect the remains, and notify local authorities. If the remains appear to be Native American, or if any funerary objects, sacred objects, or objects of cultural patrimony are discovered, USMMA will follow the notification and consultation protocols in the Native American Graves and Repatriation Act (NAGPRA) Section 3 and 43 C.F.R. § 10.4.

C. Immediately upon receipt of the notification required in Stipulation IV.A, the designated CRM shall:

1. Inspect the work site to determine the extent of the discovery and ensure that the project manager and contractor supervisors know that construction activities with the potential to affect the historic property in question must be halted as a legal and contractual requirement;
2. Clearly mark the area of discovery and establish a 50-foot buffer between the discovery and ground disturbing activities;
3. Implement additional measures, e.g., surveillance or concealment as appropriate, to protect the discovery from looting and vandalism;
4. Have a professional archaeologist inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and
5. Within forty-eight (48) hours of the discovery USMMA shall notify the SHPO and other consulting parties, as appropriate, of the discovery and describe the measures that will be implemented within five (5) business days.

D. Upon receipt of the information required above, USMMA shall provide the SHPO and other consulting parties with its assessment of the NRHP eligibility of the discovery and the measures proposed to resolve adverse effects. In making its evaluation, USMMA in consultation with the SHPO may assume the discovery to be NRHP eligible for the purposes of Section 106 pursuant to 36 C.F.R. § 800.13(c). The SHPO and other consulting parties shall respond to the USMMA assessment within forty-eight (48) hours of receipt.

E. USMMA will consider the SHPO and other consulting parties' recommendations on eligibility and treatment of the discovery and carry out any appropriate required actions. USMMA will provide the SHPO and consulting parties with a report on the actions within two (2) weeks of implementation.

F. Any disputes over the evaluation or treatment of previously unidentified historic properties will be resolved in accordance with Stipulation V ("Dispute Resolution") of this Agreement.

V. Dispute Resolution

A. Signatories or concurring parties to this Agreement may raise objections to actions carried out or proposed by USMMA about the implementation of measures stipulated in this Agreement. USMMA shall notify the other Signatories of any objections raised and shall consult with the objecting party to resolve the objection.

B. If the objection remains unresolved, USMMA shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection. The ACHP shall provide USMMA with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USMMA shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. USMMA will then proceed according to its final decision.

C. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar-day time period, USMMA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USMMA shall prepare a written response that considers any timely comments regarding the dispute from the signatories and concurring parties to this Agreement, and provide them and the ACHP with a copy of such written response.

D. USMMA's responsibility to carry out all other actions subject to the terms of this Agreement, that are not the subject of the dispute, remain unchanged.

E. At any time during implementation of the measures stipulated in this Agreement, should a member of the public object to USMMA regarding the manner in which the measures stipulated in this Agreement are being implemented, USMMA shall notify the signatories to this Agreement and consult with the signatories to evaluate and address the objection.

VI. Efficient Communications

In accordance with Executive Order 13563 "Improving Regulation and Regulatory Review," and Executive Order 13589 "Promoting Efficient Spending" communications between signatories of this Agreement and consulting parties discussed herein shall be in electronic form whenever practicable, permitted by law, and consistent with applicable records retention requirements, unless specifically requested in another form (i.e., mail/hard copy) by a consulting party. The USMMA is responsible for maintaining an up-to-date list of email addresses of the consulting parties.

VII. Amendment and Termination

A. This Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date of the last signature of the signatory parties.

B. If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment. If within thirty (30) calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

C. Should the designated CRM position change, USMMA shall notify SHPO and the ACHP within five (5) days of the position changing, and shall consult on each individual undertaking pursuant to 36 C.F.R. §§ 800.3 through 800.6 until the designated CRM is in place.

D. Once the Agreement is terminated, and prior to work continuing on undertakings, USMMA must either (a) comply with 36 C.F.R. § 800 for each individual undertaking, or (b) consult to determine if parties agree to develop a new PA, pursuant to 36 C.F.R. § 800.14. USMMA shall notify the signatories as to the course of action it will pursue.

VIII. Anti-Deficiency Act

USMMA's future efforts to execute requirements arising from the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs USMMA's ability to implement the stipulations of this Agreement, USMMA shall consult in accordance with the amendment and termination procedures found at Stipulation VII of this Agreement. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341.

IX. Duration of Agreement

This Agreement shall remain in full force and effect for ten (10) years after the date of the last signatory's signature. This Agreement shall be reviewed periodically, not less than five (5) years from the execution of the Agreement. Six (6) months prior to the date this Agreement would otherwise expire, USMMA shall consult with the Signatories to determine whether the Agreement needs to be extended, amended, or terminated and take such actions as appropriate.

Execution of this Agreement by USMMA, the SHPO, and the ACHP and implementation of its terms, evidence that USMMA has considered the effects of the undertakings on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

UNITED STATES MERCHANT MARINE ACADEMY

By: _____ Date: _____
RDML Susan Dunlap, United States Maritime Service

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Erik Kulleseid

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler
Executive Director

Appendix A

NRHP Listed Elements at

U.S. Merchant Marine Academy

DRAFT

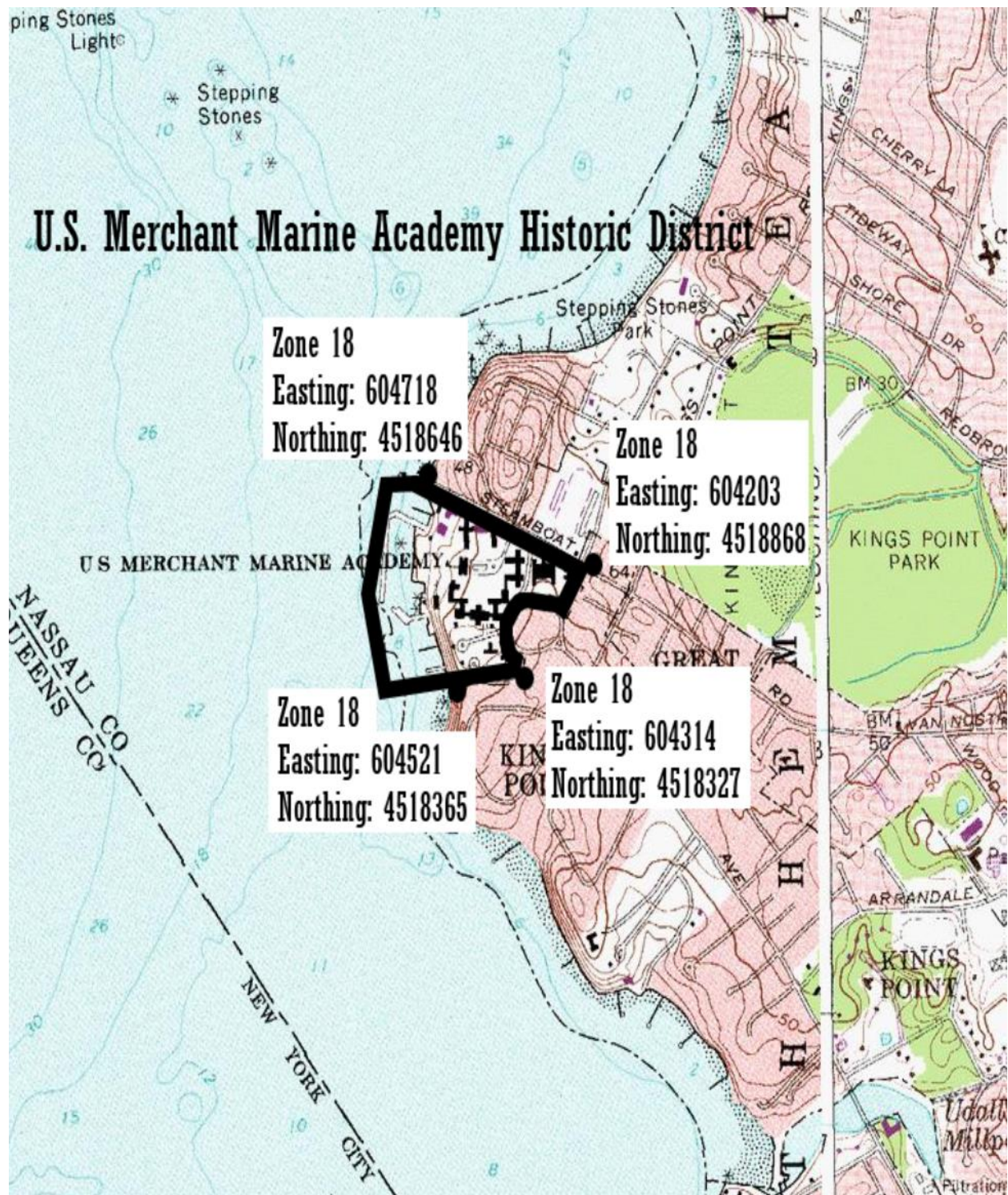


Figure 1: Location and boundary for the USMMA historic district

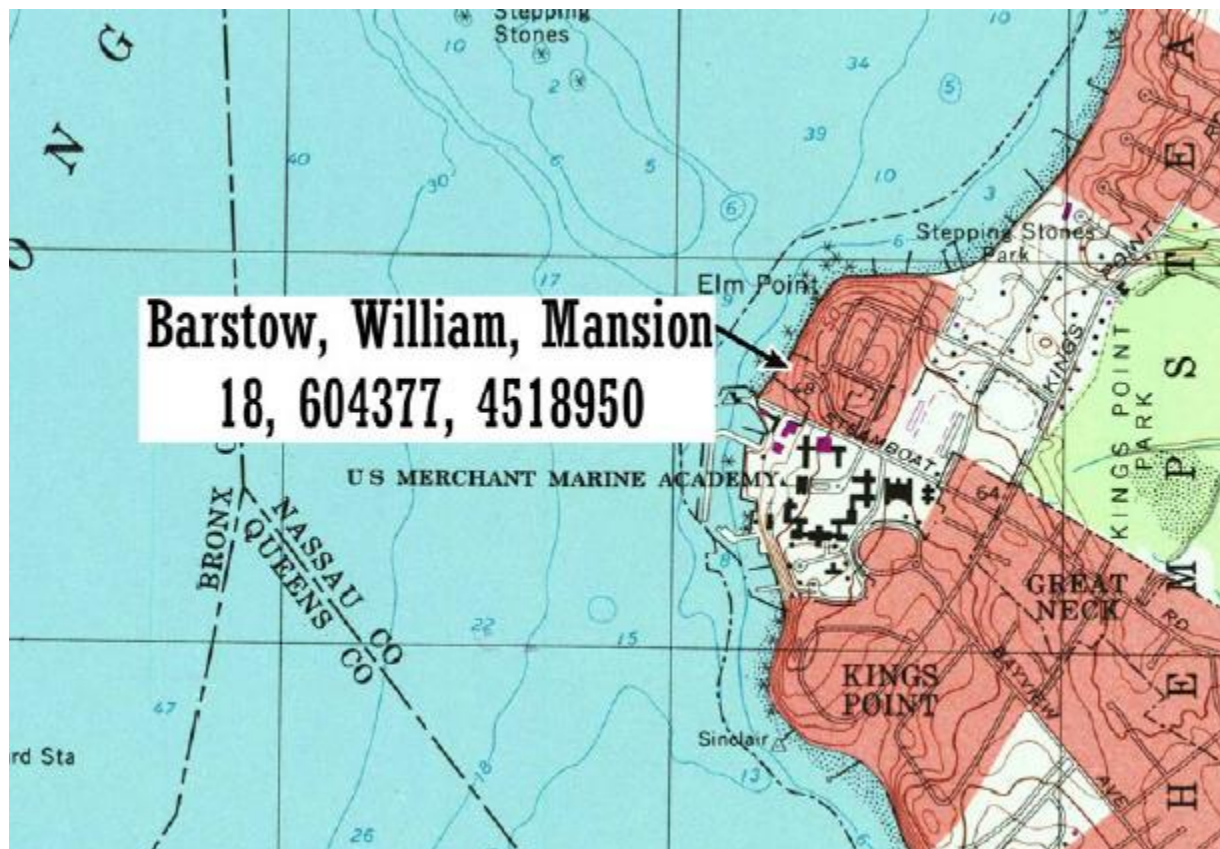


Figure 2: Location of the individually listed William Barstow Mansion

U.S. Merchant Marine Academy Historic District List of Contributing and Non-Contributing Features

SITE: (1 contributing)

- 1 Topography, landscape, viewsheds, layout, and circulation

BUILDINGS: (30 contributing, 9 non-contributing)

- 2 Quarters D (Grenwolde Casino)
- 3 Quarters A (Neiley Estate – Main House)
- 4 Quarters J (Neiley Estate – Garage)
- 5 Melville Hall (Meighan Estate)
- 6 Quarters K (Meighan Estate – Garage)
- 7 Land Hall (Schenck Estate)
- 8 Quarters B (a Grenwolde house)
- 9 Quarters C (Vreeland house)
- 10 Wiley Hall (Bendel/Chrysler Mansion)
- 11 Palmer Hall
- 12 Murphy Hall
- 13 Cleveland Hall
- 14 Rogers Hall
- 15 Barry Hall
- 16 Jones Hall
- 17 Furuseth Hall
- 18 Fulton Hall
- 19 Bowditch Hall
- 20 Berger Hall [noncontributing]
- 21 Gibbs Hall [noncontributing]
- 22 Fitch Building
- 23 Quarters G [noncontributing]
- 24 Samuels Hall
- 25 Coast Guard Station [noncontributing]
- 26 Yocum Sailing Center [noncontributing]
- 27 Delano Hall
- 28 O'Hara Hall
- 29 Natatorium [noncontributing]
- 30 Admissions Center
- 31 Guard Shack [noncontributing]
- 32 Patten Medical Clinic
- 33 U.S. Merchant Marine Memorial Chapel
- 34 Boat House (Schenck Estate swimming pool) [noncontributing]
- 35 Crowninshield Pier and Boat House
- 36 Men's Shower
- 37 Women's Shower
- 38 Paint Locker
- 39 Sewer Pump House [noncontributing]
- 40 Bland Library

STRUCTURES: (4 contributing)

- 41 Vickery Gate
- 42 Marvin Place Gate
- 43 Mallory Pier
- 44 Eldridge Pool

OBJECTS: (4 Contributing, 1 Noncontributing)

- 45 Flagpole

- 46 Amphitrite Pool
- 47 Gun (5-inch deck gun)
- 48 War Memorial
- 49 Mariner Monument [noncontributing]

William Barstow Mansion

- 1 American Merchant Marine Museum (William Barstow Mansion)
- 1 Quarters O (Garage)

Property outside the Historic District and Barstow Mansion Determined Not Eligible

Tomb Memorial Field & Brooks Stadium
Upper & Lower Roosevelt Fields
Tennis & Handball Courts
Brooks Field House
Parking Lot
Quarters E & F
DPW Buildings
Quarters M & N (McNulty Campus)
Quarters L (McNulty Campus)
Solar-Hydrogen House

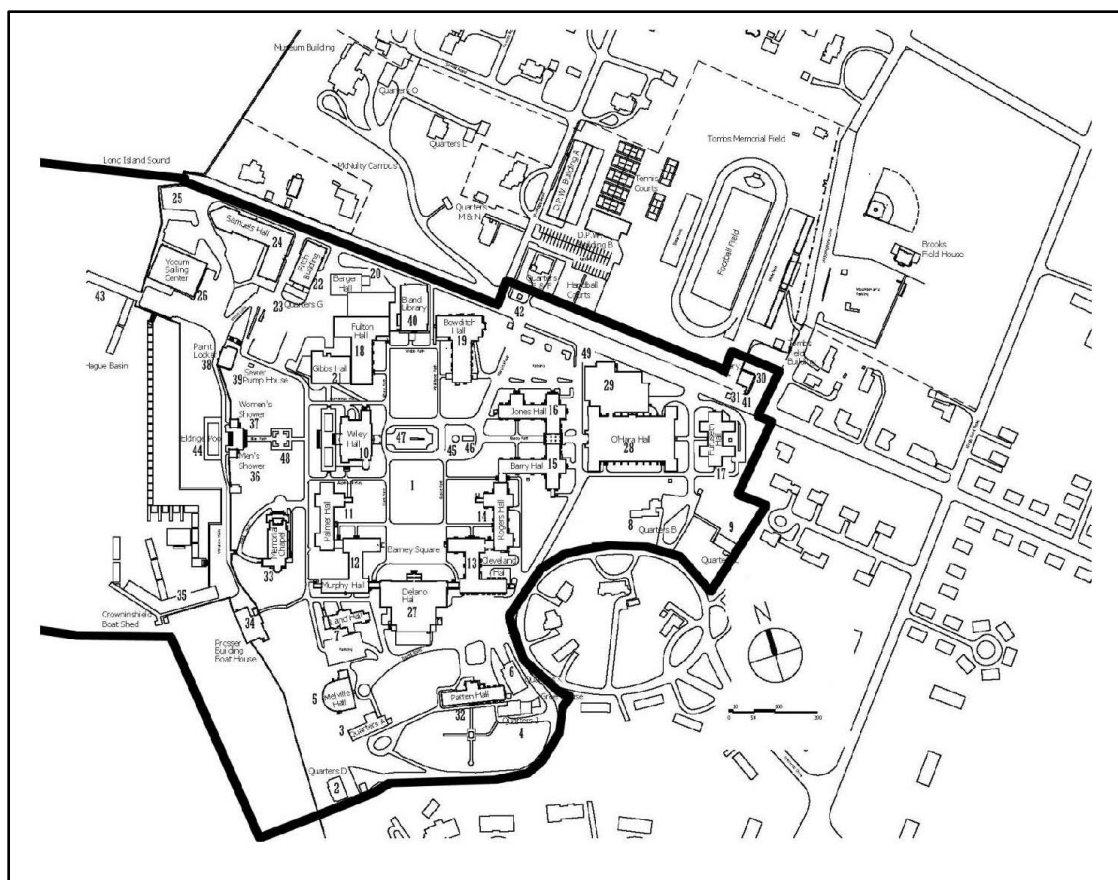


Figure 3: Sketch map of USMMA Historic District

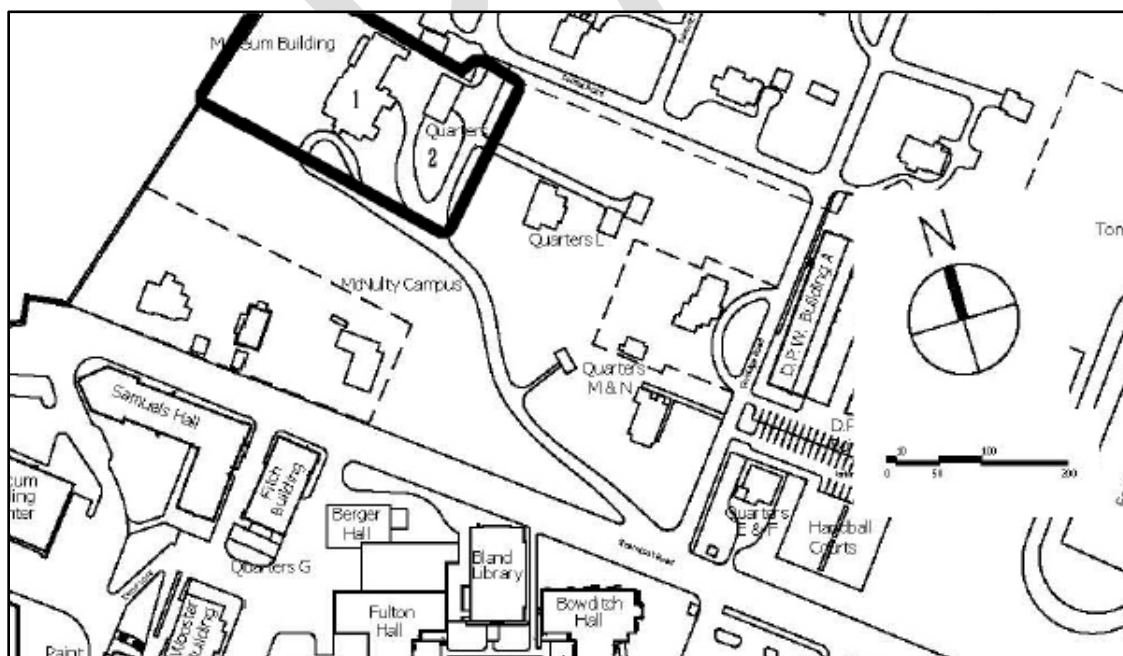


Figure 4: Sketch map of the William Barstow Mansion

DRAFT

Appendix B

Preparation and Review of Documents

I. Preparation and Review of Documents

A. Determine the Undertaking

1. The U.S. Merchant Marine Academy (USMMA) designated Cultural Resource Manager (CRM) shall determine if the proposed project is an undertaking as defined by 36 C.F.R. § 800.16(y).

2. The USMMA designated CRM shall determine if the undertaking is an activity that is listed in Stipulation II.B. (Streamlined Review Process) in the Programmatic Agreement Among the U.S. Merchant Marine Academy, The New York State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Operations, Maintenance, and Development Activities at the U.S. Merchant Marine Academy, Nassau County, New York (Agreement).

a. If the USMMA designated CRM determines the undertaking is an activity that is listed in Stipulation II.B., the USMMA designated CRM shall document this determination for inclusion in the Annual Report, and USMMA has no further obligations under this stipulation.

b. If the USMMA designated CRM determines the undertaking is not an activity that is listed in Stipulation II.B., the USMMA designated CRM shall continue on in the Project Review process.

B. Define the Area of Potential Effects (APE) and Identify Historic Properties

1. The USMMA designated CRM shall determine and document the undertaking's APE taking into account direct, indirect, and cumulative effects.

2. Property over fifty years old outside the USMMA Historic District (HD) boundary was surveyed for eligibility to the NRHP. This includes the all athletic fields, Brooks Fieldhouse and Quarters E & F, M&N, and L. New York State Historic Preservation Officer (SHPO) concurrence was obtained to note that these properties are not contributing to the HD. However, these properties may be within a project APE.

C. Evaluate Effects of the Undertaking

1. The USMMA designated CRM shall assess the effects of the proposed undertaking, to include direct, indirect, and cumulative effects, on historic properties using the criteria of adverse effects (36 C.F.R. § 800.5(a)(1)) to determine if the proposed undertaking will have an adverse effect and shall prepare a notification package to submit to SHPO as outlined in Section I.D.

D. SHPO Consultation

1. The USMMA designated CRM shall consult with SHPO for all projects that have the potential to adversely affect historic properties using the following process:

a. The USMMA designated CRM shall prepare a notification package for the SHPO that includes a description of the undertaking, an illustration of the APE, a list of identified historic properties within the APE, photographs of properties within the APE, and the justification for the effects determination.

b. The USMMA designated CRM shall submit the notification package to the SHPO via SHPO's online New York Cultural Resource Information System (CRIS). Upon receipt of the notification package, the SHPO has thirty (30) calendar days to provide a written response to the USMMA designated CRM. If the SHPO does not respond within thirty (30) days, the USMMA will presume SHPO's concurrence.

2. Finding of No Adverse Effects

a. If the USMMA CRM determines that the proposed undertaking will have no adverse effects to historic properties, and the SHPO concurs, the CRM shall document this determination for inclusion in the Annual Report identified in Stipulation I.H in the Agreement (Annual Report), and USMMA has no further obligations.

3. Finding of Adverse Effects

a. If the USMMA CRM determines that the proposed undertaking will have an adverse effect on historic properties, the CRM will continue to consult with SHPO, as well as other consulting parties and the public (as appropriate) to determine ways to avoid, minimize, or mitigate the adverse effects.

b. If the SHPO does not concur with the finding of adverse effects, the USMMA designated CRM shall consult with the SHPO for no more than fifteen (15) calendar days, or other time period as agreed to between SHPO and the USMMA designated CRM, upon receipt of SHPO notification of non-concurrence to attempt to resolve concerns as identified by the USMMA designated CRM.

(1) If at the end of the fifteen (15) calendar days, or agreed to specified time, the USMMA designated CRM changes the finding to no adverse effects, the USMMA designated CRM shall document this SHPO concurrence for inclusion in the Annual Report. USMMA has no further obligations under this stipulation.

(2) If at the end of the fifteen (15) calendar days, or agreed to specified time, the USMMA designated CRM maintains the finding of adverse effects, the USMMA designated CRM shall continue on in the Project Review process.

c. If the SHPO concurs with the finding of adverse effects, the USMMA designated CRM will proceed in the Project review process.

2. The USMMA designated CRM, working with MARAD Federal Preservation Officer (FPO), shall identify and notify additional parties as relevant, including all those who have expressed an interest, other Consulting Parties to the Agreement (Consulting Parties) such as local preservation organizations and local governments, the Advisory Council on Historic Preservation (ACHP), and the public within 10 calendar days of receiving the SHPO's concurrence of an adverse effect finding for an undertaking using the following process:

- a. The USMMA designated CRM shall prepare a notification package including a description of the undertaking, an illustration of the APE, a list of identified historic properties within the APE, the explanation for the finding of adverse effects, steps taken or considered by USMMA to avoid or minimize the adverse effects, any SHPO comments received by USMMA regarding the undertaking, an invitation to participate in a consultation to resolve adverse effects, and the proposed date for a Consulting Parties meeting (if applicable).
- b. The USMMA designated CRM will post the package on their website and/or send the notification package in hard copy to the Consulting Parties as warranted. Note that the ACHP accepts submissions electronically (<https://www.achp.gov/e106-email-form>).

(1) All Consulting Parties are under no obligation to provide comments on the effect determination; however, if they wish USMMA to consider their comments regarding the effect determination, Consulting Parties should submit comments in writing within thirty (30) calendar days of receipt. If no comments are received within that time, the USMMA designated CRM shall make a second attempt to contact the Consulting Parties for comments and if they wish to participate in the resolution of adverse effects. USMMA shall take any comments received into consideration before concluding the consultation and will notify the SHPO of any concerns and the USMMA response to those concerns.

3. The USMMA designated CRM shall hold a consultation meeting, as necessary, to include the SHPO, within forty-five (45) calendar days after notifying the Consulting Parties, to discuss alternatives that could avoid, minimize, or mitigate the adverse effects. Additional meetings shall be scheduled as needed.

4. If through consultation with the SHPO, and other Consulting parties the undertaking avoids the adverse effects, the USMMA CRM will document the alternatives utilized to reduce the effects of the undertaking to a no adverse effects finding and include them in the Annual Report. USMMA has no further obligations under this stipulation.

5. If through consultation with the SHPO and other Consulting Parties the adverse effects are mitigated, the measures agreed to can be specified in a letter agreement referencing the administrative stipulations in the Agreement and signed by the Deputy Superintendent as the Superintendent's designee, SHPO, and any other party that may have a responsibility outlined in the letter agreement. The letter agreement will be included in the Annual Report.

6. If through consultation with the SHPO, and other Consulting Parties, the adverse effects are minimized or mitigated, USMMA shall determine which treatment measures are appropriate, and specify those treatment measures in a Memorandum of Agreement in accordance with 36 C.F.R. § 800.6(c) and filed with ACHP upon execution.

7. The ACHP will only participate in the resolution of adverse effects for individual undertakings if a written request is received from USMMA or the SHPO.

DRAFT

Appendix C

Cultural Resources Management Responsibilities

U.S. Merchant Marine Academy

DRAFT

Cultural Resources Management

- (1) Cultural resources must be considered in developing and implementing management and development plans for lands and buildings under control of the U.S. Merchant Marine Academy (USMMA), including but not limited to, academic, residential, religious, and athletic/recreational buildings, medical clinic, and administration and staff offices.
- (2) Direct, indirect, and cumulative impacts on cultural resources of all kinds must be addressed when considering the environmental impacts of USMMA activities under the National Environmental Policy Act (NEPA), beginning at the earliest possible time when planning any cultural resources action. Impacts on cultural resources may constitute extraordinary circumstances requiring special review of actions that would otherwise be categorically excluded from extensive NEPA review. Impacts on cultural resources may be, but are not necessarily, significant enough impacts on the quality of the human environment to require preparation of environmental documentation under NEPA.
- (3) The impacts of proposed actions on cultural resources will be considered when planning and in decision making at all levels within USMMA, with reference to the legal authorities listed herein.
- (4) USMMA officials responsible for compliance with NEPA, the National Historic Preservation Act (NHPA), and other cultural resource legal requirements will ensure that other government agencies, organizations, and members of the public who may be concerned about impacts on cultural resources are fully and fairly consulted when planning pertinent USMMA action.
- (5) Consultation with federally recognized Indian tribal governments about cultural resource-related matters will be guided by this Agreement.

Cultural Resources Legal Authorities

1. FEDERAL LAWS

- a. **American Indian Religious Freedom Act (AIRFA)** (42 U.S.C. § 1996). Establishes as U.S. Government policy to respect the inherent right of American Indians, Alaska Natives, and Native Hawaiians to practice their traditional religions. AIRFA has been interpreted by the courts to require Federal agencies to consult with Indian tribes and other Native Americans about agency actions that may affect religious practices, places, and sacred objects used in religious practices.
- b. **Archaeological and Historic Preservation Act (AHPA)** (54 USC 312501-312508). Also called the Archaeological Data Preservation Act (ADPA). This law requires Federal agencies to recover archaeological, historical, and scientific data that may be threatened by construction projects and other related actions they undertake, assist, or license.
- c. **Archaeological Resources Protection Act (ARPA)** (16 USC 470aa-mm). This law prohibits the excavation or removal of archaeological resources from Federal and Indian tribal land without a permit issued by the responsible land management agency in accordance with regulations issued jointly by the Departments of Agriculture, Defense, and Interior, and the Tennessee Valley Authority.

d. **Federal Records Act (FRA)** (44 U.S.C. ch. 31 § 3101). This law and its extensive regulations require Federal agencies to manage documents and other records under their jurisdiction and control in accordance with procedures approved by the National Archives and Records Administration (NARA) that are designed to preserve the historical value of such records.

e. **National Environmental Policy Act (NEPA)** (42 U.S.C. §4321 et seq). This law articulates U.S. Government policy favoring protection and responsible use of the human environment (see Appendix B to the Programmatic Agreement Among the U.S. Merchant Marine Academy, The New York State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Operations, Maintenance, and Development Activities at the U.S. Merchant Marine Academy, Nassau County, New York (Appendix B)). Together with the implementing regulations issued by the Council on Environmental Quality (CEQ) (40 C.F.R. §§ 1500-1508), NEPA requires Federal agencies to consider the environmental impacts of their proposed actions prior to making decisions.

f. **National Historic Preservation Act (NHPA)** (54 U.S.C. 300101 et seq). Establishes government-wide policy favoring responsible use of historic properties (see Appendix B), places included in or eligible for the National Register of Historic Places, and creates a national historic preservation program. The following sections provide specific direction relevant to USMMA:

(1) **Section 106:** Requires agencies to consider the effects of actions they propose to undertake, assist, or license on historic properties. Implementing regulations (i.e., 36 C.F.R. § 800) by the Advisory Council on Historic Preservation (ACHP) outline how agencies are to consult with State and Tribal Historic Preservation Officers and other interested parties, identify historic properties, and resolve adverse effects.

(2) **Section 110:** Requires agencies to identify and manage historic properties under their jurisdiction and control, encourage the preservation of non-federally owned historic properties, discourage the anticipatory destruction of historic properties, document historic properties that must be destroyed or damaged, maintain historic preservation offices, respond to comments by the ACHP, and consult with preservation authorities, Indian tribes, and others in carrying out their historic preservation activities. Authorizes inclusion of historic preservation costs as eligible project costs of Federal and federally assisted projects.

(3) **Section 111:** Requires agencies to seek adaptive uses of historic properties under their jurisdiction or control that can no longer be used for agency purposes, authorizes leases as a means of effecting adaptive use, and authorizes agencies to retain proceeds from such transactions to support preservation activities.

(4) **Section 112:** Requires agencies to use qualified personnel to carry out historic preservation work and maintain records of such work in perpetuity.

g. **Native American Graves Protection and Repatriation Act (NAGPRA)** (25 U.S.C. 3001-3013). Requires Federal agencies and museums receiving Federal assistance to identify Native American cultural items (i.e., Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony) under their control, and repatriate such items to culturally affiliated tribes having the right to receive them. Also requires work stoppage and various forms of coordination and documentation when such items are unearthed on Federal or Indian tribal lands. Regulations issued by the National Park Service (NPS) (i.e., 43 C.F.R. § 10) require that

anyone, including Federal agencies, whose actions may disturb such items on Federal or Indian tribal lands must consult with culturally affiliated tribes and develop and implement plans of action.

h. Religious Freedom Restoration Act (RFRA) (42 U.S.C. ch. 21B § 2000bb et seq). Prohibits Federal agencies from substantially burdening any person's practice of religion, unless doing so is required to meet a compelling government interest, and the means of doing so is the least restrictive means of meeting that interest.

2. DEFINITIONS

a. Ancestral remains. Ancestral remains are the physical remains, including, but not limited to, bones of deceased human beings, including, but not limited to, those that must be given special consideration under NAGPRA.

b. Community identity. A human community's sense of itself typically expressed in and reinforced by social institutions, beliefs, forms of expression, arts, crafts, means of subsistence, and patterns of interaction. Community identity is an aspect of the human environment that must be addressed in analyses under NEPA, and at times under other cultural resource legal authorities.

c. Cultural item. Cultural items, as defined at Section 2(3) of NAGPRA with regard to Native Americans, include ancestral human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony. Communities that are not of Native American ancestry may also have cultural items, and concerns about such items should be respected, though such communities do not have special rights under NAGPRA.

d. Cultural resource. Cultural resource, as used here, includes all aspects of the human environment that have historical, architectural, archaeological, or cultural significance, including, but not limited to, historic properties, archaeological resources and data, Native American ancestral remains and cultural items, religious places and practices, historical objects and artifacts, historical documents, and community identity.

e. Historical document. Historical documents are documents preserved in any medium (e.g., paper, film, and electronic media) that may be of historical, archaeological, or cultural value, or that must be maintained by USMMA in accordance with the requirements of the FRA. This will be determined by the records management office.

f. Historical object or artifact. Historical objects or artifacts are portable and semi-portable objects that may have historical, archaeological, or cultural value, including, but not limited to, portable archaeological artifacts that must be cared for in accordance with ARPA.

g. Historic property. A historic property is any district, site, building, structure, or object included in or eligible for the National Register of Historic Places, and hence entitled to consideration under NHPA.

h. Native American. Native Americans are individuals, tribes, and organizations that have special rights under NAGPRA, as Indian tribes and/or Native Hawaiian organizations under NHPA, under AIRFA, or under any other provision of Federal law relating to Indian tribes and/or Native Hawaiian organizations.

i. Religious place. A religious place is a location where a group of people practice their beliefs. It may be a building or structure (e.g., a church, synagogue, mosque, or temple), a rural area, an urban location, or a natural place. Impacts on religious places must be considered under RFRA and sometimes under AIRFA.

j. Religious practice. A religious practice is any activity carried out by a group of people expressing its religious beliefs; impacts on such practices must be considered under RFRA and sometimes AIRFA.

DRAFT

Appendix D

United States Merchant Marine Academy Historic District Property Maintenance and Repair Manual

[to be inserted]

DRAFT

Appendix E

Landscape Management Plan for the United States Merchant Marine Academy

[to be inserted]