O Programmatic Agreement

The figures referred to in the Programmatic Agreement identify the locations of culturally sensitive resources; therefore, the figures are not included in Appendix O - Programmatic Agreement of the FEIS. The figures are, however, available to the appropriate organizations and/or agencies.

PROGRAMMATIC AGREEMENT (PA)

BETWEEN THE UNITED STATES NAVY AND THE MAINE STATE HISTORIC PRESERVATION OFFICER (SHPO) ON THE LEASE AND PROPERTY TRANSFER OF PROPERTIES LOCATED AT NAVAL AIR STATION BRUNSWICK, MAINE AND TOPSHAM ANNEX, TOPSHAM, MAINE

WHEREAS, the United States Navy (Navy) is responsible for implementation of applicable provisions of the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended in 2005, and the Navy is proceeding with the closure and disposal of excess and surplus property in a manner consistent with the "2005 Report to the President of Defense Base Closure and Realignment Commission," dated 8 September 2005; and

WHEREAS, the Navy has determined that the disposal of Naval Air Station (NAS) Brunswick and the McKeen Street Housing Annex, East Brunswick Radio Transmitter Site, and Topsham Annex in a manner consistent with the NAS Brunswick & Topsham Reuse Master Plans may have an effect upon historic properties, which may be eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the Navy has consulted with the Maine State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800.2 implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the Navy has consulted with the Passamaquoddy (Indian Township and Pleasant Point Reservations), the Aroostook Band of the Micmac, the Penobscot, and the Houlton Band of the Maliseet tribes, to identify if they have religious or cultural interest in the Area of Potential Effects (APE) and,

WHEREAS, the Navy has consulted with the: Pejepscot Historical Society, and the towns of Brunswick and Topsham pursuant to 36 CFR § 800.2 implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the Navy has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect and invited comment from the ACHP and after consultation ACHP has elected not to be a signatory to this PA; and

WHEREAS, the Navy is providing the Federal Aviation Administration, the United States Coast Guard, the United States Army and other potential property recipients the opportunity to acquire properties at NAS Brunswick to support their reuse plans; and

WHEREAS, the Navy has prepared detailed evaluations of eligibility of the buildings and structures pursuant to the National Register of Historic Places (NRHP) at NAS Brunswick and

Topsham Annex in the documents titled "Historic Architecture Comprehensive Survey Update of Buildings and Structures at NAS Brunswick, ME" dated May 2010; and "Comprehensive Architectural Survey of 14 buildings in the Military Triangle of Topsham Annex of NAS Brunswick, Maine" May 2010; and

WHEREAS, the Navy has previously identified five Ammunition magazines as eligible for inclusion in the NRHP. Navy's current survey efforts documented an additional 76 architectural resources falling within the period of significance of NAS Brunswick and its associated five remote annexes (WW II and Cold War). 15 of the newly evaluated resources are eligible for listing in the NRHP under the Program Comment for WW II and Cold War Era (1939-1974) Ammunition Storage Facilities (2006) for a total of 20; and,

WHEREAS, the remaining 61 architectural resources within NAS Brunswick have been determined, in consultation with the SHPO to be not eligible for inclusion in the NRHP; and,

WHEREAS, The Navy has conducted comprehensive survey of the Military Triangle of Topsham Annex and has determined, in consultation with the SHPO, that Facility 333 is individually eligible for inclusion in the NRHP; and,

WHEREAS, the Navy has conducted a comprehensive archaeological identification survey on NAS Brunswick, the findings of which are contained in "Comprehensive Archaeological Identification Survey at NAS Brunswick, Brunswick, Maine" dated February 2010, and "Modification 01: Comprehensive Archaeological Identification Survey at NAS Brunswick, Brunswick, Maine" dated June 30 2010; and

WHEREAS, the Navy's Archaeological survey efforts have been completed, the Navy has, in consultation with the SHPO determined that the 706 acres surveyed represent a completed survey; and

WHEREAS, the Navy's survey efforts resulted in the recordation of 35 archaeological sites, 27 of which are recommended for evaluative testing pursuant to Maine State Archaeological guidelines.

NOW, THEREFORE, the Navy and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account effect of the undertaking on the historic properties, and evidences compliance with Section 106 of the NHPA in accordance with 36 CFR 800.6(c) and 36 CFR 800.14.

I. STIPULATIONS

NAS BRUNSWICK, BRUNSWICK, ME

A. The Navy prepared and forwarded to the SHPO the final report titled "Historic Architecture Comprehensive Survey Update of Buildings and Structures at NAS Brunswick, ME" dated May 2010, and "Comprehensive Archaeological Identification Survey at NAS Brunswick, Brunswick Maine" dated August 2010.

1. The Maine SHPO has reviewed the "Historic Architecture Comprehensive Survey Update of Buildings and Structures at NAS Brunswick, ME" received on 14 June 2010 to continue consultation pursuant to Section 106 of the National Historic Preservation Act, as amended. The final report conforms to the SHPO's requirements for architectural survey projects in Maine. The SHPO concurs with the findings regarding the eligibility of historic resources at NAS Brunswick.
2. The Maine SHPO has reviewed the "Comprehensive Archaeological Identification Survey at NAS Brunswick, Brunswick , Maine" dated August 2010 (received on 14 June 2010) to continue consultation pursuant to Section 106 0f the National Historic Preservation Act, as amended. The final report conforms to the SHPO's requirements for archaeological survey projects in Maine. The SHPO concurs with the findings regarding the eligibility of historic resources at NAS Brunswick.

B. Due to the potential adverse effect to NAS Brunswick on identified archaeological sites or historic resources from the disposal and reuse of these properties, property recipients shall be required to contact the SHPO prior to any development that may affect these sites. In order to ensure the further protection of the historic properties, the covenants attached as Attachment A will be included in any long-term lease in furtherance of conveyance and/ or deed of transfer by the Navy on which any archaeological sites or historic resources are located. The covenants provide for enforcement by either the Navy or the SHPO, and shall be binding on all property recipients and future transferees. (Figures 1 and 2)

TOPSHAM ANNEX, TOPSHAM, ME

A. The Navy prepared and forwarded to the SHPO the final report titled "Comprehensive Architectural Survey of 14 buildings in the Military Triangle of Topsham Annex of NAS Brunswick, Maine" May 2010.

1. The Maine SHPO has reviewed the "Comprehensive Architectural Survey of 14 buildings in the Military Triangle of Topsham Annex of NAS Brunswick, Maine", May 2010, to continue consultation pursuant to Section 106 of the National Historic Preservation Act, as amended. The final report conforms to the SHPO's requirements for architectural survey projects in Maine. The SHPO concurs with the findings regarding the eligibility of historic resources at Topsham Annex.

2. In consultation with SHPO, it has been determined that no additional archaeological investigations are warranted for Topsham Annex.

B. Due to the potential adverse effects to the eligible historic property located at Topsham Annex, (Building 333), property recipients shall be required to contact the SHPO prior to any development that may affect this site. In order to **ensure long-term preservation of the property's historic significance**, the covenants attached as Attachment A will be included in any long-term lease in furtherance of conveyance and/ or deed of transfer by the Navy. The covenants provide for enforcement by either the Navy or the SHPO, and shall be binding on all property recipients and future transferees. (Figure 3)

II. RESOLVING OBJECTIONS

A. Should any party object to any action or recommendation pertaining to the implementation of this PA the parties shall consult for no more than fifteen (15) calendar days to resolve the objection. If the Navy determines that the objection cannot be resolved, the Navy shall forward all documentation relevant to the objection to the SHPO including the Navy's proposed resolution of the objection. Within thirty (30) calendar days following receipt of all pertinent documentation, the SHPO shall exercise one of the following options:

i. Advise the Navy the SHPO concurs in its proposed resolution of the objection, whereupon the Navy shall resolve the objection accordingly; or

ii. Provide the Navy with recommendations, which the Navy shall take into account in reaching a final decision regarding its proposed resolution of the objection; or

iii. Notify the Navy it will comment pursuant to 36 CFR § 800.6(b), and proceed to comment. The resulting comment shall be taken into account by the Navy in accordance with 36 CFR § 8oo.6(c)(2).

B. Should the SHPO not exercise one of the foregoing options within thirty (30) calendar days following receipt of all pertinent documentation, the Navy may assume the SHPO concurrence in its proposed resolution of the objection.

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

D. At any time during implementation of the measures stipulated in this PA should an objection to any measure within this PA or its manner of implementation be raised by a

member of the public, the Navy shall consider the objection and consult as needed with the objecting party, the SHPO, and other parties to this PA.

III. AMENDMENTS AND NON-COMPLIANCE

A. If either of the parties to this PA believes the terms of the PA cannot be carried out or the PA should be amended, that party shall immediately consult with the other party to develop amendments to the PA. The process of amending the PA shall be the same as that used in creating the original PA. If the parties cannot agree upon an amendment, the disagreement shall be addressed pursuant to Stipulation IV.

B. If the terms of this PA are not carried out, the Navy shall immediately notify the SHPO and shall consult to determine if amendments are necessary. If the terms of this PA are not carried out, the Navy shall not take or sanction any action which would cause an adverse effect to the historic property or any action that would foreclose the SHPO consideration of modifications or alternatives to the Undertaking.

C. Execution of this PA by the Navy and the SHPO, and implementation of its terms, evidence that the Navy has afforded the Maine SHPO an opportunity to comment on the effect of this Undertaking and its effects on the historic properties.

IV. SIGNATURES

David Lloyd 9-27-10

BRAC PMO NE DATE

9/23/10

State Historic Preservation Officer, Maine DATE

Attachment A

TO BE INCLUDED IN ALL NAS BRUNSWICK LEASES IN FURTHERANCE OF CONVEYANCE AND DEEDS WHERE ARCHAEOLOGICAL SITES ARE LOCATED:

Covenant re: Archeological Matters: As more fully described in the document attached to this Quitclaim Deed and incorporated herein as Exhibit A, areas within NAS Brunswick ME have been identified and are referred to within, collectively, as Archeological Sites. GRANTEE, its successors, and its assigns hereby covenant at all times to the Maine State Historic Preservation Officer ("ME SHPO") to maintain and preserve the Archeological Site as follows:

1. No disturbance of the ground surface or any other thing shall be undertaken or permitted to be undertaken on the Archeological Sites that would affect the physical integrity of the Archeological Site without first obtaining the prior written permission of the ME SHPO (signed by a fully authorized representative thereof). Should the ME SHPO require, as a condition to granting of such permission, that GRANTEE conduct a Phase II survey, archeological data recovery operations or other activities designed to mitigate the adverse effect of the proposed activity on the Archeological Site, GRANTEE shall at its own expense conduct such activities in accordance with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 447344-37) and such standards and guidelines as ME SHPO may specify (including, but not limited to, standards and guidelines for research design, field work, analysis, preparation and dissemination of reports, disposition of artifacts and other materials, consultation with Native American or other organizations, and re-interment of human remains).

2. GRANTEE shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the Archeological Site and shall promptly report any such disturbance to the ME SHPO.

3. GRANTEE will allow the ME SHPO or his/her designee, upon reasonable advance notice to GRANTEE, an annual inspection of the Archeological Sites in order to ascertain whether GRANTEE is complying with the conditions of this preservation covenant.

4. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, GOVERNMENT, or (upon 60

days prior notice to GOVERNMENT) ME SHPO, may, following reasonable written notice to GRANTEE, institute a suit to enjoin said violation, seek damages, return of any Archeological artifacts removed, require, if appropriate, the restoration of the Archeological Site or to seek any other remedy available at law or equity.

5. The failure by GOVERNMENT or by the ME SHPO to exercise any right or remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by GOVERNMENT or by the ME SHPO of any other right or remedy or the use of such right or remedy at any other time.

6. This covenant shall be binding on GRANTEE, its successors, and its assigns in perpetuity. The restrictions, stipulations, and covenants contained herein shall be inserted by GRANTEE, its successors, and its assigns, verbatim or by express reference in any deed or other legal instrument by which such party divests itself of either the fee simple title or any lesser estate in the archeological site or any part thereof.

7. This covenant shall be a binding servitude upon the real property that includes the Archeological Site and shall be deemed to run with the land. Recording this Quitclaim Deed shall constitute conclusive evidence that GRANTEE agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.

TO BE INCLUDED IN ALL NAS BRUNSWICK AND TOPSHAM ANNEX LEASES IN FURTHERANCE OF CONVEYANCE AND DEEDS WHERE HISTORIC RESOURCES ARE LOCATED:

Covenant re: Historic Preservation: NAS Brunswick and Topsham Annex have been identified as containing historic structures eligible for listing in the National Register of Historic Places (collectively, "Historic Resources"). GRANTEE, on behalf of itself, its successors, and its assigns, hereby covenants to the ME SHPO to preserve and maintain the Historic Resources in a manner that preserves and maintains the attributes that contribute to the eligibility of the Historic Resources for listing in the National Register of Historic Places. Such attributes include exterior features (including facades and fenestration, scale, color, materials, and mass), interior features determined significant in consultation with the ME SHPO, and views from, to, and across the property.

1. All parcels on which historic resources are situated within NAS Brunswick and Topsham Annex as described below in the document attached

to this Quitclaim Deed and incorporated herein as Exhibit A, will be preserved and maintained in accordance with The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (National Park Service). No construction, alteration, rehabilitation, remodeling, demolition, disturbance of the ground surface, or other action shall be undertaken or permitted to be undertaken within NAS Brunswick and Topsham Annex that would materially affect the integrity or the appearance of the attributes described above without prior approval by the ME SHPO and a record of such.

2. To ensure that the long-term preservation of the property's historic significance will be preserved, all parcels on which historic resources are situated within NAS Brunswick and Topsham Annex as identified in Exhibit A, will be maintained in accordance with The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (National Park Service). No construction, alteration, rehabilitation, remodeling, demolition, disturbance of the ground surface, or other action that would materially affect the integrity or the appearance of the attributes described above of that property situated within NAS Brunswick ME and Topsham Annex ME shall take place without prior notice to and consultation with the ME SHPO in accordance with paragraphs 2.A through 2.C below. Such notice shall describe in reasonable detail the proposed undertaking and its expected effect on the integrity or appearance of the property situated within NAS Brunswick ME and Topsham Annex ME.

A. Within thirty (30) calendar days of the ME SHPO's receipt of notification provided by GRANTEE pursuant to the foregoing provisions of this paragraph 2, the ME SHPO will respond to GRANTEE in writing as follows:

(i) that GRANTEE may proceed with the proposed undertaking without further consultation; or

(ii) that GRANTEE must initiate and complete consultation with the ME SHPO before GRANTEE may proceed with the proposed undertaking.

B. If the ME SHPO fails to respond to GRANTEE's written notice, as described in the above paragraph 2.A, within thirty (30) calendar days of the ME SHPO's receipt of the same, GRANTEE may proceed with the proposed undertaking without further consultation with the ME SHPO.

C. If the response provided to GRANTEE by the ME SHPO pursuant to the above paragraph 2.A requires consultation with the ME SHPO, both parties shall so consult in good faith to arrive at mutually agreeable and appropriate measures that GRANTEE will implement to mitigate any adverse effects associated with the proposed undertaking. If the parties are unable to arrive at such mutually agreeable mitigation measures, GRANTEE shall, at a minimum, undertake recordation for the concerned property in accordance with the Secretary of Interior standards for recordation and any applicable state standards for recordation, or in accordance with such other standards to which the parties may mutually agree prior to proceeding with the proposed undertaking. Pursuant to this covenant, any mitigation measures to which GRANTEE and the ME SHPO mutually agree, or any recordation that may be required, shall be carried out solely at the expense of GRANTEE.

3. Upon acquisition of NAS Brunswick ME and Topsham Annex ME, GRANTEE shall take prompt action to secure the Historic Resources from the elements, vandalism, and arson, and shall undertake any stabilization that may be required to prevent deterioration. GRANTEE will be responsible for this security and stabilization, to the same extent required of GOVERNMENT, at the time of deed transfer. GRANTEE will make every effort to retain or reuse, to the extent practicable, the historic structures.

4. In the event that archeological materials are encountered during construction or ground disturbance activities, work shall cease in the immediate area until the ME SHPO is consulted and provides written permission to recommence work. Should the ME SHPO require, as a condition of the granting of such permission, that GRANTEE conduct archeological phase ll survey, data recovery operations or other activities designed to mitigate the potential adverse effect of the proposed activity on the archeological site, GRANTEE shall at its own expense conduct such activities in accordance with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 447344-37) and such standards and guidelines as the ME SHPO may specify, including, but not limited to, standards and guidelines for research design, field work, analysis, preparation and dissemination of reports, disposition of artifacts and other materials, consultation with Native American or other organizations, and re-interment of human remains.

5. GRANTEE will allow the ME SHPO or his/her designee, upon reasonable advance written notice to GRANTEE, to conduct an annual inspection of the Historic Resources in order to ascertain whether GRANTEE is complying with the conditions of this preservation covenant.

6. GRANTEE will provide the ME SHPO with a written summary of actions taken to implement the provisions of this preservation covenant within one (1) year after the effective date of the transfer of NAS Brunswick ME and Topsham Annex ME. Similar reports will be submitted to the ME SHPO biannually thereafter until the Navy has disposed the excess portions of the NAS Brunswick ME and Topsham Annex ME properties.

7. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, GOVERNMENT, or (upon 60 days prior notice to GOVERNMENT) ME SHPO, may, following reasonable written notice to GRANTEE, institute a suit to enjoin said violation, seek damages, require the restoration of the Archeological Site or to seek any other remedy available at law or equity.

8. The failure of GOVERNMENT or the ME SHPO to exercise any right or remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by GOVERNMENT or the ME SHPO of any other right or remedy or the use of such right or remedy at any other time.

9. This covenant is binding on GRANTEE, its heirs, successors and assigns in perpetuity. The restrictions, stipulations and covenants contained herein shall be inserted by GRANTEE, its successors and assigns, verbatim or by express reference in any deed or other legal instrument by which it divests himself/herself/itself of either the fee simple title or any lesser estate in NAS Brunswick ME and Topsham Annex ME or any part thereof.