

MEMORANDUM OF AGREEMENT
REGARDING
THE HOOPER ISLAND LIGHTHOUSE
BETWEEN
THE NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION AND

WHEREAS the Hooper Island Lighthouse (the “Lighthouse”) was conveyed to The United States Lighthouse Society (“USLHS”) on May 26, 2009 by Deed recorded in Deed Liber 0968, Folio 179, in Dorchester County, Maryland. USLHS was in breach of their obligation to preserve, maintain and utilize the Lighthouse per the deed restrictions.

WHEREAS the United States Navy, Naval Air Warfare Center Aircraft Division (“NAWCAD”) entered into a Memorandum of Agreement with USLHS on May 6, 2009, (“Expiring MOA”) that remained valid as long as the USLHS was the owner of the Hooper Island Lighthouse and as long as the aforementioned danger zone of the Patuxent River Complex includes the location of the Hooper Island Lighthouse.

WHEREAS USLHS has agreed to convey its interest in the Lighthouse to _____ as the new owner (the “New Grantee”) via Quitclaim Deed, and upon the transfer of the property the Expiring MOA will no longer be valid.

NOW THEREFORE the NAWCAD has agreed to execute a new Memorandum of Agreement with the new owner to ensure operation and use of the Lighthouse to support the test range described below.

BACKGROUND

The NAWCAD maintains and operates a set of test ranges known as the Atlantic Test Range (“ATR”). ATR is the Navy's principal Research, Development, Test and Evaluation (“RDT&E”) and fleet support activity for Naval aircraft, engines, avionics, aircraft support systems and ship/shore air operations. The inshore operating area, known as the Patuxent River Complex (“PRC”), consists of selected targets and airspace covering regions over the Chesapeake Bay, Maryland, Delaware, and Virginia. ATR controls an aerial and surface firing range and two exclusive-use surface target areas in the central Chesapeake Bay. 33 C.F.R. § 334.200 describes a specific surface danger zone associated with the Chesapeake Bay aerial and surface firing range. This area is designated for the release of non-explosive ordnance (practice bombs, inert missiles, rockets, bomb shapes, etc.) from aircraft.

The historic Hooper Island Lighthouse is located in the northeast corner of that surface danger zone of the Chesapeake Bay aerial and surface firing range. Upon execution of the Quitclaim Deed from USLHS, _____ shall become the new owner of the Hooper Island Lighthouse and will be given the deed to the historic property subject to certain covenants from the federal government. The lighthouse will also continue to operate as a United States Coast Guard automated aid to navigation. _____ has specific legal responsibilities under the deed to preserve the lighthouse in accordance with historic preservation standards.

Because the lighthouse owned by _____ is located inside the NAWCAD 's operational Patuxent River Complex surface danger zone, it is essential that _____ and the NAWCAD have agreements in place regarding the lighthouse and access to it. The purpose of this Memorandum of Agreement (“MOA”) is to document those agreements between _____ and the NAWCAD. Most importantly, it is imperative, for obvious safety reasons, that the lighthouse not be occupied whenever range operations which involve dropping non-explosive ordnance or firing inert missiles are scheduled to occur in that area of the range.

Given the potential for future scheduling conflicts and the need for access to the Hooper Island Lighthouse and the area surrounding it by both the NAWCAD and _____, both parties agree to abide by the following agreements:

AGREEMENTS

1. As the owner of Hooper Island Lighthouse, _____ agrees it will not occupy the light-house with personnel on a full-time basis, i.e., 24 hours a day, 365 days a year. Because of the nature of NAWCAD range operations, full-time habitation of the lighthouse would present a safety risk to _____ personnel and a scheduling risk to NAWCAD. Therefore, overnight occupation of the lighthouse will be limited to _____ members or their authorized representatives and contractors conducting rehabilitation or maintenance on the structure. Occupancy on a full-time basis, i.e., 24 hours a day, 365 days a year, shall not be allowed. Any proposed change to this approach by _____ will require formal approval by the NAWCAD. The _____ agrees to present to NAWCAD for prior approval any desired changes to the habitation of the Lighthouse.
2. _____ and NAWCAD agree that all visits to the lighthouse by _____ or its authorized representatives shall be scheduled and coordinated in advance with NAWCAD's ATR Central Schedules Office (301-342-4607) to ensure that the lighthouse is not occupied during test events that might pose a hazard to the lighthouse or its inhabitants. _____ and NAWCAD agree to work this schedule together with flexibility to ensure that the _____ will have a reasonable and appropriate amount of scheduled time on the lighthouse in order to meet its legal obligations to preserve the lighthouse while also providing the NAWCAD access to the range which it controls under 33 C.F.R. § 334.200 for testing and evaluation of aircraft and weapons systems crucial for national defense.
3. On days on which the lighthouse will be manned and range operations will be conducted which require the lighthouse to be unoccupied, _____ shall ensure that the lighthouse is unoccupied one hour prior to the start of the scheduled test event and to not return until notified by the designated range personnel that the operation has concluded and the area is safe. The _____ and NAWCAD agree to maintain active communication with each other prior to and during conduct of the event. Aircraft testing and evaluation schedules are very dynamic which may necessitate short lead time schedule changes. The NAWCAD agrees to notify the _____ at the earliest possible time when events requiring the lighthouse to be unoccupied are rescheduled.
4. _____ is legally required to submit any proposed changes to the exterior appearance and

footprint of the lighthouse to the Maryland Historical Trust (“MHT”) for approval. Prior to submitting any proposed changes to MHT, _____ agrees to provide NAWCAD a courtesy copy of any proposed significant changes to the exterior of the lighthouse or its footprint which would increase the height of the lighthouse (including antennas) or conceivably affect the ability of NAWCAD to conduct operations near the lighthouse. This will enable NAWCAD to have adequate notice and time to submit any comments on the proposed changes to MHT prior to MHT adjudication.

5. NAWCAD ATR operations, from time to time, will benefit from having one or two personnel occupy the lighthouse during test operations or from installing small and temporary range equipment on the lighthouse for specific operations of limited duration. _____ agrees to work with NAWCAD to accommodate these requests. If _____ deems that any NAWCAD requests require MHT prior approval, NAWCAD agrees to submit its request to MHT for processing. The final determination regarding NAWCAD requests under this paragraph shall be made by MHT.

6. _____ agrees to abide by public laws and regulations regarding the use of electronic devices within or on the lighthouse (e.g., all such electronic equipment will be FCC approved and shall be used in accordance with FCC approved instructions).

7. _____ agrees to hold harmless and indemnify the NAWCAD from any claim for damages or injury to any person or property arising out of the use or occupancy of the property covered under this MOA, except in any case of willful misconduct or gross negligence, or in the case of a claim by _____ that damages or injury arose from the NAWCAD's failure to comply with requirements in this MOA. However, in no event may the foregoing language be construed to constitute a warranty. Any claim related to this MOA must be subject to the MOA's disputes process before it may be asserted outside the ambit of the MOA. The NAWCAD shall not be responsible for incidental or consequential damages. The NAWCAD shall not be responsible for any delay or failure in performance of any part of this MOA to the extent that such delay or failure is caused by fire, flood, explosion, war, Acts of God or any other circumstances beyond the reasonable control of the NAWCAD.

8. The _____ and the NAWCAD agree to further collaborate to ensure that both parties are able to execute their missions and legal responsibilities of lighthouse preservation and Naval range operations, respectively.

9. This MOA may only be changed through mutual written approval of both parties.

10. Duration: This MOA is valid as long as the aforementioned danger zone of the Patuxent River Complex includes the location of the Hooper Island Lighthouse. This MOA shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11 . Disputes:

A. General. The _____ and NAWCAD hereby agree that they shall engage in good faith negotiations before the _____ or the NAWCAD may pursue any remedy that is available to it under the law, and the _____ and the NAWCAD agree that the following procedures constitute the administrative procedures that must be exhausted before pursuing any remedy that is available to either party under the law.

B. Liability Disputes. Any dispute between the _____ and the NAWCAD, arising under or related to this Agreement, which the parties are unable to resolve by negotiation, and in which party liability is at issue, shall be handled in accordance with the Federal Tort Claims Act and Section 7 of this Agreement.

C. Other Disputes.

1. Alternative Dispute Resolution. Any dispute not involving liability between the _____ and the NAWCAD arising under or related to this Agreement that the parties are unable to resolve by negotiations, will be decided by an Alternative Dispute Resolution (ADR) process, which may be defined in greater detail by such further agreement of the parties, as necessary. ADR between the parties will generally involve further investigation and negotiation by a disinterested principal selected by each party, and will be directed and facilitated by an Arbitrator mutually agreed upon by the parties. Each party will pay its own costs and expenses of participating in the ADR process, and the parties will share equally the costs and expenses of the Arbitrator. The resolution of the dispute will be by mutual agreement of the parties, reduced to writing, and signed by each of them, and will be effective to accomplish all proper purposes, including, but not limited to, the NAWCAD supporting any necessary modification of the basic Agreement and documenting the necessity of the associated funding actions.

2. Judicial Review in a Court of Competent Jurisdiction. The _____ or the NAWCAD, after exhausting the ADR remedies specified in paragraph 1 of this article, may pursue any remedy that is available to it in law or equity.

12. Points of contact: The following are the primary, secondary and tertiary points of contact for all matters regarding this agreement:

_____ (NEW GRANTEE):

- 1.
- 2.
- 3.

U.S. Navy:

1. _____

2. [Redacted]

3. [Redacted]

For the United States Navy:

For the _____:

Name:

Name:

Position:

Position:

Signature:

Signature:

Date: _____

Date: _____

For the _____:

Name:

Position:

Signature:

Date: _____