MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES ARMY CORPS OF ENGINEERS
AND THE UNITED STATES COAST GUARD

I. PARTIES.

This Memorandum of Agreement (MOA) is an agreement between the United States Coast Guard (USCG) and the United States Army Corps of Engineers (Corps).

II. AUTHORITY.

Under 14 U.S.C. § 141 the Coast Guard may utilize its personnel and facilities to assist any Federal agency to perform any activity for which such personnel and facilities are especially qualified.

The Corps of Engineers must provide notice and opportunity to comment on permit applications pursuant to Section 404(a) of the Clean Water Act and Corps of Engineers' regulations at 33 C.F.R. §§ 320 – 331.

III. PURPOSE.

The purpose of this agreement is to establish a formal process whereby the USCG will provide input into the Corps' evaluation process for issuing permits related to fixed or floating structures, including but not limited to permanently moored vessels and facilities, on the navigable waters, harbors, and rivers of the United States. This agreement is not applicable to the siting of bridges, which is subject to U.S. Coast Guard regulations in accordance with 33 U.S.C. §§ 401, 491, to 507, and 525 to 534. See 33 CFR Subchapter J.

IV. REFERENCES.

1. 33 U.S.C. § 403 Protection of navigable waters and of harbor and river improvements generally subchapter I--in general Sec. 403.
2. 33 C.F.R. Part 320 General regulatory policies.
3. 33 C.F.R. Part 322 Permits for structures or work in or affecting navigable waters of the United States.
4. 33 C.F.R. Part 325 Processing of Department of the Army permits.
5. 33 C.F.R. Part 327 Public hearings.
6. 33 C.F.R. Part 330 Nationwide permit program.

7. 33 U.S.C. §§ 1221 *et. seq.* Port and Waterways Safety Program.

8. 33 C.F.R. Part 160 Port and Waterways Safety.

9. Permanently Moored Vessels (PMV), Quality Action Team (QAT) Final Report dated December 7, 1999.

V. BACKGROUND.

1. In the prior decade a series of incidents occurred on the western rivers of the United States which posed a serious risk to passengers embarked on vessels moored on the waterway. These incidents also posed a risk to the safety of persons occupying structures located immediately adjacent to or over the waterway. This provided the impetus to the Coast Guard to review and evaluate its involvement in the permit process related to the siting of fixed or floating structures, including permanently moored vessels and other facilities (hereafter collectively referred to as "structures") and to institute measures for reducing the risk of casualty.

2. One of the key variables contributing to risk is the location of a structure on the waterway. The best time and place to impact that variable is during the permitting process. With the exception of the siting of bridges, which is subject to Coast Guard regulations at 33 C.F.R. Subchapter J, only the Corps has the authority to issue permits related to the siting of structures on the navigable waters of the United States. Further, though Corps permits can be revised or rescinded for cause after issuance, they are generally not subject to regular review or renewal. This MOA lays out a formalized and consistent procedure for USCG involvement in the Corps' new permit evaluation and any re-evaluation review process.

VI. RESPONSIBILITIES.

1. In keeping with current practice, the Corps will continue to forward the public notice of all permit applications related to the construction of structures to local Captains of the Port (COTP) for comment as part of the Corps' permit process. The method for forwarding the public notice will be agreed to by the cognizant district engineer and COTP and may include mail, e-mail or posting on the Corps' homepage.

2. Upon receipt of the public notice of the permit application, the COTP will determine whether to conduct a risk assessment of the site in terms of its safety on the waterway. If conducted, the assessment will use established and documented procedures (see ref. 9) and be completed in cooperation with affected stakeholders, as appropriate. The COTP will notify the Corps within 10 days of the date of the public notice if a risk assessment will be conducted. Subsequently, the COTP will provide the Corps with a recommendation within 30 days of the date of the public notice.

3. The COTP may periodically re-evaluate the risk to structures because of changes in traffic

patterns or after a significant marine casualty or incident in the vicinity. The re-evaluation will be conducted using established and documented procedures (see ref. 9) and in cooperation with affected stakeholders and the public, as appropriate.

4. The COTP will keep the Corps informed of any re-evaluation of the risk to structures at these sites at all times.

5. The Corps will fully consider the COTP's recommendations and proposals in issuing new permits and in considering the need to modify existing permits.

VII. IMPLEMENTING THE MOA

1. Each agency will review its internal procedures and, where appropriate, will revise them to accommodate the provisions of this MOA. Each agency will also designate in writing one senior official who will be responsible for coordinating and implementing the provisions of this MOA.

2. Each agency will designate regional officials to be responsible for coordinating and implementing the provisions of this MOA in their respective regions.

VIII. SAVINGS PROVISION.

Nothing in this MOA alters, amends, or affects in any way the statutory or regulatory authority of the Corps or the USCG.

IX. EFFECTIVE DATE.

This MOA is effective upon signature and shall remain in effect until terminated. Both parties may amend it by mutual agreement and either agency may terminate it with a 30-day written notice.

Signed at Washington, D.C., this 2 June 2000

R. C. NORTH
Rear Admiral, USCG
Assistant Commandant for Marine Safety
and Environmental Protection

HANS A. VAN WINKLE
Major General, USA
Deputy Commander for Civil Works