

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ENVIRONMENTAL PROTECTION AGENCY, REGION 1;
THE U.S. ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT; AND
THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)
PERTAINING TO CULTURAL RESOURCES CONSULTATION
FOR THE
NEW BEDFORD HARBOR SUPERFUND SITE,
NEW BEDFORD, MASSACHUSETTS AND VICINITY**

WHEREAS, the United States, acting through the United States Environmental Protection Agency (EPA), Region 1, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”), as amended, 42 U.S.C. §§ 9601 *et seq.*, published a Record of Decision (hereinafter “ROD”) for the Upper and Lower Harbor Operable Unit for the New Bedford Harbor Superfund Site in Bristol County, Massachusetts which called for the dredging and removal of contaminated sediments from New Bedford Harbor (the Remedial Action); and

WHEREAS, the U.S. Army Corps of Engineers (Corps), New England District, is providing assistance and expertise to the EPA for implementation of the Remedial Action in Acushnet, Fairhaven, and New Bedford, Massachusetts as set out in Interagency Agreement No. DW96940189-01-1 and Amendment thereto; and

WHEREAS, in accordance with the ROD; Corps Engineer Regulations 1105-2-100 (Native American Considerations), paragraphs C-4, Cultural Resources, subparagraphs e. (1)-(3)(f); and the National Historic Preservation Act of 1966 (NHPA), as amended, and implementing regulations 36 CFR 800, EPA and the Corps have formally initiated consultation with the Wampanoag Tribe of Gay Head (Aquinnah) (hereinafter called the Tribe); and

WHEREAS, the Tribe is a Federally Recognized Tribe whose ancestral lands and those of its non-federally recognized sister Tribe, the Mashpee Wampanoag, are located within the proposed Remedial Action area; and

WHEREAS, Section 106 of the NHPA and 36 CFR 800 require that Federal agencies consult with Native American tribes or entities that may attach cultural or religious significance to historic properties that may be affected by an undertaking; and

WHEREAS, Federal policy and law requires that the Tribe be given a timely, full and meaningful opportunity to take part in preserving aspects of the cultural environment that have the greatest importance to the Tribe;

NOW THEREFORE, EPA, the Corps, and the Tribe agree to abide by the following stipulations for the preservation of cultural resources for the duration of the Remedial Action, until the cleanup is completed:

STIPULATIONS

1. The parties acknowledge that the Remedial Action has begun, commencing with cultural resources surveys and subsurface testing; and that the Tribe has been and will continue to be given the opportunity to identify historic properties within the Remedial Action area that may be of religious, sacred, or spiritual significance to the Tribe. Upon identification of Tribal historic properties, EPA and the Corps, recognizing that an Indian tribe may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites, will ensure that the confidentiality of this information is addressed and maintained pursuant to 36 CFR 800.11(c) and to the fullest extent provided by law.
2. In the event that historic properties are identified, and in accordance with 36 CFR 800.5, EPA, the Corps, and the Tribe will apply the Criteria of Adverse Effect to properties within the area of potential effects. An adverse effect is found when an undertaking may alter, directly or indirectly any of the characteristics of a historic property that qualify the property for inclusion in the National Register. If an adverse effect is found, further consultation will take place between EPA, the Corps, the Tribe, the Massachusetts State Historic Preservation Officer (MA SHPO), and other consulting parties that will assist EPA to develop and evaluate alternatives or modifications to the Remedial Action that could avoid, minimize or mitigate adverse effects.
3. The Tribe will ensure that the identification of sacred, spiritual, or other ancestral properties or sites within the Remedial Action impact area is conducted in a timely fashion prior to construction so that proper resource avoidance, impact minimization, or mitigation may be conducted.
4. The Tribe will have a Cultural Resource Monitor (CRM), who will observe the archeological work in accordance with the site-specific health and safety plan. The CRM will coordinate with the Corps, EPA, and their contractors access and activities around the Site. EPA agrees to provide the CRM with any personal protective equipment (ppe) required to access contaminated areas of the site. The CRM will report to the Tribal Historic Preservation Officer (THPO). The THPO will communicate any Tribal questions or concerns about the Remedial Action to the Corps Tribal Coordinator (hereafter Tribal Coordinator).
5. In the event of any discovery of cultural resources, the Tribal Coordinator, the THPO, EPA and the Corps New Bedford Resident Engineer will be contacted and further consultation will take place per 36 CFR 800.13. EPA, the Corps, the MA SHPO, and other consulting parties will consult with the Tribe. Based on this consultation EPA will implement necessary actions to resolve adverse effects prior to construction affecting such

sacred, spiritual, or other ancestral properties or sites within the remedial impact area. The CRM and the Tribal Coordinator will be notified and the Tribe will be given an opportunity to respond. EPA shall take into account the Tribe's recommendations regarding cultural resources in implementing the Remedial Action under CERCLA.

6. The location of the discovery shall be reported solely to the CRM, the THPO, and the appropriate Corps, EPA and MA SHPO representatives.
7. In the event that a cultural resource is encountered that qualifies as a historic property as defined in Section 106 of the NHPA, a site-specific mitigation plan will be developed and commented on by all consulting parties pursuant to the Section 106 process.
8. Any cultural artifacts found would be temporarily curated by the archaeological Contractor until such time as a permanent repository is identified.
9. In the event that human skeletal remains are uncovered, all work within the surrounding area of the find shall immediately cease and the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq.*) and Massachusetts General Laws, including but not limited to Chapter 9 sections 26A and 27C, for human burials shall apply. EPA, the Corps, and the Tribe will be contacted immediately about the discovery and the location. The Massachusetts State Police and the Regional Medical Examiner will then be notified. If said remains are determined to be more than 100 years old, the State Archaeologist, Massachusetts Commissioner on Indian Affairs, and the THPO will then be contacted upon notification.
10. Upon identification of the human remains as Native American, the Tribe shall be consulted further to determine the proper course of action and disposition of the remains, including reinterment, if desired, by the Tribe in accordance with the Native American Graves Protection and Repatriation Act. The Tribe shall provide input in designing emergency burial relocation, if necessary, and shall serve as the liaison with the Wampanoag Confederation and Tribal Councils. The Tribe shall be given an opportunity to carry out religious ceremonies and rituals attendant upon reinterment of the remains. The Tribe shall be responsible for the timely and expeditious treatment and disposition of the remains.
11. At any time during the implementation of the measures stipulated herein should any objection to any such measure or manner of implementation be raised, all parties shall take the objection into account and consult as needed to resolve the objection. If further consultation is not productive and the objection is not resolved, the comments of the Advisory Council on Historic Preservation (Council) will be sought as stipulated in 36 CFR 800.2(b)(2). The Council, as the Federal agency established to implement and oversee the Section 106 process, may decide to become involved or may be invited to consult by any of the consulting parties as a means of resolving conflicts and completing the Section 106 process.

- | 12. Execution and implementation of this Memorandum of Understanding evidences that EPA and the Corps have complied with their Section 106 responsibilities with the Tribe for all individual undertakings of the Remedial Action. Should any party to this Memorandum determine that some portion of it cannot be met, is not being met or believes a change is necessary, that party shall immediately notify the other parties in writing and request the parties consult to consider an amendment or addendum to this Memorandum which would ensure full compliance. Such amendment or addendum shall be executed in the same manner as the original Memorandum.

U.S. Army Corps of Engineers, New England District

By: _____ Date: _____
Colonel Brian E. Osterndorf, District Engineer

U.S. Environmental Protection Agency, Region 1

By: _____ Date: _____
Patricia L. Meaney, Director, EPA Region 1,
Office of Site Remediation and Restoration

Wampanoag Tribe of Gay Head (Aquinnah), Tribal Historic Preservation Officer

By: _____ Date: _____
Matthew Vanderhoop, Tribal Historic Preservation Officer