

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE NARRAGANSETT INDIAN TRIBE
AND
THE U.S. ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT**

WHEREAS, this agreement is made between the Narragansett Indian Tribe (the Tribe), based in Charlestown, Rhode Island, and the U.S. Army Corps of Engineers (USACE), New England District located in Concord, Massachusetts (collectively the Signatories); and

WHEREAS, in accordance with the USACE Tribal Consultation Policy (5 December 2023), which provides guidance for building collaborative and close relationships with Tribal Nations, this agreement serves to establish consultation protocols as part of USACE's government-to-government relationship with the Tribe; and

WHEREAS, this agreement encompasses activities over which USACE New England District has authority; and

WHEREAS, special attention is brought to Section 110 of the NHPA, which mandates that federal agencies assume responsibility for the preservation of historic properties under their jurisdiction, and the Native American Graves Protection and Repatriation Act (NAGPRA), which governs Indian burials and associated funerary objects located on Federal property; and

WHEREAS, the purpose of this agreement is to establish a collaborative relationship to ensure that USACE effectively consults with the Tribe on USACE actions within areas of interest to the Tribe, and to ensure that historic properties are properly identified and characterized by the Tribe so that USACE and the Tribe may carry out their responsibilities pursuant to Section 106 and Section 110 of the NHPA; and

WHEREAS, such responsibilities shall include but may not be limited to (1) identifying all historic properties within the area of potential effect or permit area; (2) taking into account the potential impacts to such historic properties; and (3) fully evaluating and jointly planning alternatives or measures to avoid, minimize or mitigate any potential adverse effects of proposed activities to historic properties, including archaeological investigation, data recovery, and/or Tribal monitoring; and

NOW, THEREFORE, the Tribe and USACE hereby agree as follows:

- 1) USACE will provide notice and opportunity for consultation for all Regulatory public notices for individual permit projects, CW projects/studies or new, non-routine Operations and Maintenance activities that are ground disturbing at USACE projects and allow 30 days from the date of the notice for the Tribe to provide initial comments. USACE will provide advanced notice of projects evaluated under individual permit review to the extent practicable.

- 2) USACE will continue to collaborate with the Tribe to further identify and refine geographic areas of interests and the types/categories of projects of interest to the Tribe across the New England area of responsibility.
- 3) USACE will provide early engagement on the development of any general permit when each is created/renewed/updated to allow the Tribe an opportunity to provide initial comments. USACE will provide the Tribe with 30 days from the date of any general permit renewal public notice or individual letter for the Tribe to provide initial comments. USACE will collaborate with the Tribe and fully consider the Tribe's comments in improving the coordination for general permit development.
- 4) USACE will make a good faith effort to identify potential historic properties through the use of resources which may include but are not limited to: information from the applicant, any State Historic Preservation Office archaeological site file or database, historic geographic information systems (GIS) data as well as public databases which may provide data to support the presence or absence of National Register of Historic Places (NRHP) historic properties.
- 5) USACE will conduct tribal consultation under Section 106 of the NHPA processes for permit actions that have the potential to cause effects to historic properties. USACE will conduct a Section 106 review and will consult with the Tribe in accordance with the 36 CFR 800 regulations. Specifically:
 - a. For consultations on historic properties of religious and cultural significance to the Tribe off tribal lands, USACE will consult with the Tribe in accordance with 36 CFR 800.2(c)(2)(ii); specifically:

Identification of Historic Properties

- i. In accordance with 36 CFR 800.4(a)(4) and (b), USACE will notify and consult with the Tribe for assistance in identifying historic properties which may be of religious and cultural significance to the Tribe.
- ii. The Tribe agrees, in cases where the Tribe intends to comment, to respond to USACE in writing within 30 days as to the likelihood of the presence of historic properties of religious and cultural significance to the Tribe. In cases where the Tribe provides an initial response within 30 days and requests additional time, USACE will schedule a meeting within 14 days to discuss the comments and conveyance of additional comments through subsequent meetings and written correspondence.
- iii. If historic properties that may be of religious and cultural significance to the Tribe are present at the proposed project site, the Tribe will provide as much information as possible regarding the presence, extent, character and significance of such sites to the Tribe. USACE will maintain the confidentiality of any information provided.

- iv. In accordance with 36 CFR 800.4(b) and (c), based on information gathered from the Tribe as described above, and in consultation with the Tribe, USACE will take the steps necessary to identify historic properties and determine eligibility.

Assessment of Effects to Historic Properties

- i. No Historic Properties Affected: In accordance with 36 CFR 800.4(d)(1), if USACE finds that there are no historic properties present or that the undertaking will have no effect upon any historic properties, USACE will provide a finding of no historic properties affected to the Tribe.
- ii. Historic Properties Affected: In accordance with 36 CFR 800.4(d)(2), if USACE finds that there are historic properties which may be affected by the undertaking, USACE will notify the Tribe, invite their views on the effects, and assess adverse effects, if any, in accordance with 36 CFR 800.5.


Assessment of Adverse Effects

- i. USACE will apply the criteria of adverse effects as defined in 36 CFR 800.5(a): 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 in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. See 36 CFR 800.5(a)(1).
- ii. Finding of No Adverse Effect: In accordance with 36 CFR 800.5(c), if USACE proposes a finding of no adverse effect to historic properties, USACE will notify the Tribe. The Tribe will have 30 days to review the finding of no adverse effect. In accordance with 36 CFR 800.5(c)(2), if the Tribe notifies USACE in writing within the 30-day review period that it disagrees with the finding of no adverse effect, USACE will consult with the Tribe to resolve the disagreement. If USACE and the Tribe are unable to reach an agreement, USACE will request the Advisory Council on Historic Preservation review the finding and facilitate a resolution in accordance with 36 CFR 800.5(c)(3).
- iii. Finding of Adverse Effect: If an adverse effect is found, USACE will consult further with the Tribe to resolve the adverse effect.

Resolution of Adverse Effects

- i. In accordance with 36 CFR 800.6(a) and (b), to resolve adverse effects, USACE will consult with the Tribe to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties of religious and cultural significance to the Tribe.
 - ii. In accordance with 36 CFR 800.6(c), USACE will invite the Tribe to sign a memorandum of agreement executed to comply with Section 106 of the NHPA.
- 6) If any previously unknown tribal, historic, cultural, or archeological remains and artifacts within areas of USACE jurisdiction are encountered by the project proponent or permittee during construction, USACE will follow Advisory Council on Historic Preservation guidance for post-review discoveries (36 CFR 800.13) and notify the Tribe. USACE will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant additional investigations, a data recovery effort or if the site is eligible for listing in the National Register of Historic Places.
 - 7) Modification and amendment of this agreement, as necessary, shall be accomplished by the Signatories in the same manner as the original agreement.
 - 8) Disputes regarding the completion of the terms of this agreement shall be resolved by the Signatories. If the Signatories cannot agree regarding a dispute, any one of the Signatories may terminate the agreement by notifying the other party in writing with the reasons for their withdrawing from the agreement.
 - 9) This Agreement shall not create any new substantive rights for the parties other than authorized pursuant to the NHPA, the Archaeological Resource Protection Act, the NAGPRA, and by executive order of the President of the United States.

BY:

 10/3/24

Mark Andrews Date
Deputy Tribal Historic Preservation Officer
Narragansett Indian Tribe

03 October 2024

Justin R. Pabis Date
District Engineer
U.S. Army Corps of Engineers
New England District