

**MEMORANDUM OF AGREEMENT  
BETWEEN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
UNITED STATES FISH AND WILDLIFE SERVICE  
AND THE  
STATE OF CONNECTICUT HISTORIC PRESERVATION OFFICE  
REGARDING THE REMOVAL OF THE POND LILY DAM ON THE WEST RIVER IN NEW HAVEN,  
NEW HAVEN COUNTY, CONNECTICUT  
HC-263**

WHEREAS, the National Oceanic and Atmospheric Administration (NOAA), through the National Marine Fisheries Service, as lead federal agency and the United States Fish and Wildlife Service (USFWS) as cooperating federal funding agency, intend to provide funding and technical assistance for the removal of the Pond Lily Dam on the West River in New Haven, New Haven County, Connecticut (the "Project") for river and diadromous fish passage restoration; and

WHEREAS, the Connecticut Fund for the Environment and its program, Save the Sound, (CFE/STS), the project proponent, are to act as program administrator for the Project based on the design and regulatory permitting plans entitled "West River Restoration Pond Lily Dam Removal" prepared by Milone & MacBroom; and

WHEREAS, the Project is receiving federal funding and requires federal regulatory authorization from the United States Army Corps of Engineers, and is therefore, subject to implementing Section 106 of the National Historic Preservation Act (NHPA, 16 USC 470f); and

WHEREAS, the Project will involve the removal of approximately one hundred (100) linear feet of the existing dam spillway that was constructed on or about 1794 and such removal has been assessed by Raber Associates, a qualified firm listed on the Connecticut State Historic Preservation Office ("CT SHPO") list of qualified archaeologists and retained by CFE/STS; and

WHEREAS, Raber Associates, on behalf of NOAA and USFWS, has determined that the Project structure's size and age, spillway foundations and embankment design may contain significant information about 18<sup>th</sup> and 19<sup>th</sup> century vernacular engineering of large earthen mill dams; and

WHEREAS, Raber Associates, on behalf of NOAA and USFWS, has determined that the Pond Lily Dam spillway, as part of the Project, is eligible for the National Register; and

WHEREAS, Raber Associates, on behalf of NOAA and USFWS, has determined that the Project and associated river and fish passage restoration work will have an adverse effect on this resource; and

WHEREAS, NOAA and USFWS have consulted with the CT SHPO and invited consultation from the Mashantucket and Mohegan Indian Tribal Historic Preservation Offices to participate in the consultation process pursuant to applicable regulations found in 36 CFR Part 800 and 33 CFR Part 325, Appendix C; and

WHEREAS, in accordance with the regulations implementation Section 106 of the NHPA, NOAA has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation process; ACHP has concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, Protection of Historic Properties (36 CFR Part 800) does not apply to this undertaking; and

WHEREAS, CFE/STS, on behalf of NOAA and USFWS, has coordinated with and solicited input from local and regional communities potentially interested in historic resources to participate in the Section 106 consultation process; and

WHEREAS, NOAA and USFWS and their project administrator CFE/STS seek to ensure that the dam is removed in a professional, timely and safe manner while mitigating the adverse effects as determined by Raber Associates in the report submitted in July 2013 entitled *Historical and Archaeological Assessment for Proposed Pond Lily Dam Removal on West River, New Haven, Connecticut*, in accordance with the requirements of Section 106 of the NHPA; and

NOW, THEREFORE, NOAA and USFWS and the CT SHPO agree that the restoration of the river and diadromous fish passage and the removal of an unsafe and deteriorating dam structure on the West River at the Pond Lily Dam shall be carried out in accordance with the following stipulations in order to fully mitigate the adverse effects of the Project and associated work in accordance with the requirements of Section 106 of the NHPA, as follows.

#### STIPULATIONS

1. NOAA, USFWS and their project administrator CFE/STS will enter into an agreement with Raber Associates (proposed agreement is attached) to provide professional services to mitigate the potential adverse effects of the project.
2. The services provided by Raber Associates as described in the September 17, 2013 proposal entitled *Archaeological Monitoring Plan, Proposed Pond Lily Dam Removal*. The services include:
  - a. Coordinating on-site pre-construction meeting to review work areas and procedures with contractor and design engineer.

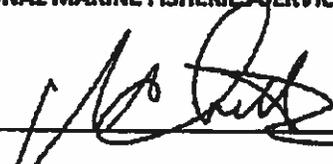


7. Construction work may then continue in the area outside the archeological resource area, as defined by the CT SHPO or its designated representative.
8. NOAA, USFWS and the CT SHPO will coordinate to assess and resolve any potential adverse effects within 30 days of any such discovery.
9. If the resource is determined eligible for the NRHP, then NOAA and USFWS, through CFE/STS, will prepare a plan for its avoidance, protection or recovery of information. NOAA, USFWS and CT SHPO shall approve such plan prior to implementation.
10. Should any signatory to this MOA object within 30 days to any actions proposed or carried out pursuant to this MOA, NOAA and USFWS shall consult with the CT SHPO to resolve the objection. If the NOAA and USFWS determine that the objection cannot be resolved, the NOAA shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:
  - a. Provide NOAA with recommendations, for which NOAA and USFWS shall take into account in reaching a final decision regarding the dispute; or
  - b. Notify NOAA that it will comment pursuant to 36 CFR 800.6(b), and then proceed to comment. Any recommendations or comment provided by ACHP will be understood to pertain only to the subject of the dispute; the NOAA and USFWS responsibility to complete all actions under the MOA that are not subjects of the dispute will remain unchanged.
11. This MOA is not a fiscal or fund obligating document and no funds are transferred hereunder. No obligation undertaken by NOAA or USFWS under the terms of this MOA will require or be interpreted to require a commitment to expend funds not obligated for a particular purpose.
12. This MOA shall continue in full force and effect until three (3) years after the date of the last signature of a signatory party or the completion of the dam removal and all stipulations of this MOA, whichever comes first.
13. This MOA may be amended when such an amendment is agreed to in writing by NOAA, USFWS and the CT SHPO. The amendment will be effective on the date a copy is signed by NOAA, USFWS and the CT SHPO.

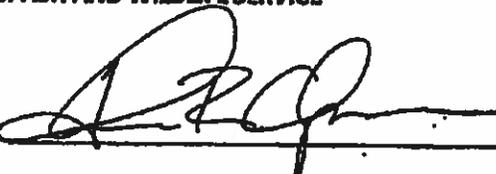
**14. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties in an attempt to develop an amendment per Stipulation 13, above. If within 30 days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.**

**15. In the event that the MOA is terminated, NOAA and USFWS will either execute an MOA with signatories pursuant to 36 CFR 800.6 (c) or request the comments of the ACHP under 36 CFR 800.7 (a).**

**NATIONAL MARINE FISHERIES SERVICE**

By:  Date: 8/8/2014  
Frederick Sutter, Director, Office of Habitat Conservation

**U.S. FISH AND WILDLIFE SERVICE**

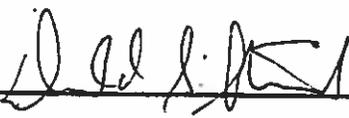
By:  Date: 11 Aug 2014  
Thomas R. Chapman, Supervisor, Southern New England Coastal Program

**STATE OF CONNECTICUT HISTORIC PRESERVATION OFFICE**

By:  Date: 8/22/2014  
Daniel Forrest, Director, Arts & Preservation and State Historic Preservation Officer

**OTHER CONSULTING PARTY:**

**CONNECTICUT FUND FOR THE ENVIRONMENT--**

By:  Date: 8/22/14  
Donald Stratt, President, Connecticut Fund for the Environment