APPENDIX C

Section 106 of the NHPA Documentation
MEMORANDUM OF AGREEMENT
AMONG THE
U.S. FISH AND WILDLIFE SERVICE,
THE MASSACHUSETTS HISTORICAL COMMISSION,
AND THE
TOWN OF SCITUATE
FOR THE HUNTER’S POND DAM REMOVAL PROJECT
IN SCITUATE, MASSACHUSETTS

WHEREAS, the Town of Scituate (Town), the project proponent, is proposing the Hunter’s Pond Dam Removal Project in Scituate, Massachusetts, consisting of removal of the dam, replacement of the culvert gate structure, repair of the culvert/raceway, and associated stabilization of the Mordecai Lincoln Mill wheelpit to restore a free-flowing riverine system for migratory and resident fish passage ("the undertaking"); and

WHEREAS, the undertaking will be accomplished using federal funds from the Disaster Relief Appropriations Act of 2013 through the Department of the Interior and the U.S. Fish and Wildlife Service (USFWS) is providing staff time for the Project, thereby making the Project and undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, 36 CFR § 800; and

WHEREAS, the USFWS has consulted with the Massachusetts Historical Commission (MHC) the office of the Massachusetts State Historic Preservation officer (SHPO) pursuant to applicable regulations found in 36 CFR Part 800 implementing Section 106 of the National Historic Preservation Act (54 U.S.C. 470f) and has provided documentation titled Report Bound Brook Restoration Scituate, Massachusetts required by 36 CFR § 800.11 and meeting the Secretary of Interior’s Standards and Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation; Secretary of the Interior’s Standards and Guidelines (48 FR 44742, September 29, 1983) 1999 rev. 2003; and

WHEREAS, the USFWS has determined in consultation with the Massachusetts Historical Commission (MHC) in correspondence dated October 11, 2016 and concurred by the SHPO on November 3, 2016 that the undertaking will have an adverse effect on the eligible for listing Mordecai Lincoln Area and Mordecai Lincoln Homestead and Mill Complex; and

WHEREAS, the USFWS has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation process in correspondence dated November 28, 2016 and the ACHP has elected not to participate; and

WHEREAS, the USFWS has solicited input from the Mashpee Wampanoag Indian Tribal Council (Tribe) to participate in this Section 106 Consultation process and the Tribe has determined that its participation is not necessary; and

WHEREAS, the USFWS has invited the Wampanoag Tribe of Gay Head to participate in this Section 106 Consultation process in correspondence dated October 3, 2016 and received no response; and
WHEREAS, the USFWS has invited the Massachusetts Board of Underwater Archaeological Resources to participate in this Section 106 Consultation process in correspondence dated October 3, 2016 and they have elected to participate in this consultation; and

WHEREAS, the USFWS and Town have invited the Scituate Historical Commission and Scituate Historic Society to participate in this Section 106 Consultation process and comment on this MOA and they have elected to participate in this consultation; and

NOW THEREFORE, the USFWS and the MHC agree that the Project undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties:

**Stipulations**

The USFWS shall ensure that the following measures are implemented:

I. Impact Avoidance of Identified Structures
   
   A. On behalf of the USFWS and Town, a 36 CFR 61 qualified industrial historian will visually assess the Mordecai Lincoln Mill wheelpit prior to construction and after dewatering to determine if any previously unidentified historical waterpower features will be impacted during the repair of the culvert/raceway and stabilization of the mill wheelpit. If such historical waterpower features will be impacted by the proposed wheelpit stabilization measures, mitigation measures will be proposed to MHC for review and comment. If MHC does not comment or object to the proposed mitigation measures within seven calendar days, the USFWS and Town shall implement the proposed plan.

II. Documentation
   
   A. On behalf of the USFWS and Town, a 36 CFR 61 qualified architectural/industrial historian will prepare archival photographic documentation of the Mordecai Lincoln Mill prior to removal of the dam spillway and any construction activities. High-resolution digital photographs will be taken that show the mill in its setting within the Mordecai Lincoln Homestead and Mill Complex and within the Mordecai Lincoln Area; general views of the mill and dam; and details of the dam spillway, culvert/raceway, gate structure, and wheelpit prior to construction and after dewatering. Photographic documentation shall consist of digital photographs captured and printed according to the MHC Photographic Documentation Technical Requirements for Digital Images, keyed to an existing conditions project plan where applicable. Written recorrection shall consist of copies of historical images and a text discussing the history and development of the mill site based upon information included in current MHC Inventory Forms (MHC # SCI.M; SCI.116) and any additional research conducted...
in the planning stages of the project. All written recordation shall be printed on archival paper and all photographic and written documentation housed in an archival box. An MHC Form D, historical archaeological site form shall be completed and submitted to the MHC for any identified historic waterpower features.

B. An original archival copy of the documentation shall be provided to the Town of Scituate, for curation by the Scituate Historical Commission, Scituate Historical Society or Scituate Town Library. A copy of the transmittal documents to the Town of Scituate and a non-archival paper copy of the archival documentation shall be submitted to the MHC.

III. Post Review Discoveries

A. The USFWS and Town shall notify MHC and appropriate invited signatories and/or interested parties, if previously unidentified historic properties, including archaeological resources, are discovered during construction activities. Consultation among the signatories and invited signatories shall proceed pursuant to 36 CFR 800.13 and the USFWS and MHC shall apply the National Register criteria of eligibility (36 CFR 60) and treat the resources consistent with the Massachusetts Board of Underwater Archaeological Resources Policy Guidance for the Discovery of Unanticipated Archaeological Resources.

IV. Dispute Resolution

A. Should any signatory to this Agreement object within thirty (30) days to any actions proposed or carried out pursuant to this MOA, the USFWS shall consult with the signatory to resolve the objection. If the USFWS determines that the objection cannot be resolved, the USFWS shall forward all documentation relevant to the dispute to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will either:

1. Provide the USFWS with recommendations which the USFWS will take into account in reaching a final decision regarding the dispute; or

2. Notify the USFWS that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any recommendations or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; the USFWS responsibility to carry out all actions under the MOA that are not subject of the dispute will remain unchanged.

B. If at any time during the implementation of the measures stipulated in this MOA, an objection should be raised by an interested member of the public or consulting parties, the USFWS will consult with the other parties to this MOA to determine the appropriate response.
V. Duration

A. This MOA will expire if its terms are not carried out within three (3) years from the date of its execution. Prior to such time, the USFWS may consult with the other signatories to reconsider the terms of this MOA and amend it in accordance with Stipulation VIII below.

VI. Limitations and Assurances

A. This MOA is not a fiscal or fund obligating document and no funds are transferred hereunder. The USFWS will ensure Project partners gain best professional cost estimates for all activities proposed in this undertaking. The USFWS agrees not to proceed with the undertaking until the project partners have obtained adequate funding, based on best professional estimates, to fulfill the obligations under this MOA.

VII. Amendments

A. This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VIII. Termination

A. 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 party in attempt to develop an amendment per the stipulation in Section VIII, above. If, within thirty (30) days (or another time period agreed to by both signatories), an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

B. In the event the MOA is terminated, the USFWS will either execute an MOA with signatories pursuant to 36 CFR 800.6 (c), or request a written response from the ACHP under 36 CFR 800.7 (a).

Execution of this MOA by the USFWS and MHC, and its subsequent filing with the ACHP, and implementation of its terms evidences that the USFWS has afforded the ACHP an opportunity to comment on the Hunter’s Pond Dam Removal Project, and that USFWS has taken into account the effects of the undertaking on historic properties.
SIGNATORY PAGE 1

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IN SCITUATE, MASSACHUSETTS

U.S. FISH AND WILDLIFE SERVICE

By: Paul Phifer
Date: 3/8/17
Paul Phifer, Assistant Regional Director, Regional Ecological Services Program

MASSACHUSETTS HISTORICAL COMMISSION

By: Brona Simon
Date: 4/4/17
Brona Simon, Executive Director, State Historic Preservation Officer, State Archaeologist
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INVITED SIGNATORIES:

TOWN OF SCITUATE, MASSACHUSETTS

By: [Signature] Date: 3/15/17
Patricia A. Vinchesi, Town Administrator