

Memorandum of Agreement among the Federal Emergency Management Agency, The Pennsylvania State Historic Preservation Officer, The Pennsylvania Emergency Management Agency, the County of Wyoming, Eaton Township, the Wyoming County Historical Society, the Endless Mountains Heritage Region, and the Northern Tier Regional Planning and Development Commission, Regarding the demolition of 45 Church Road, Tunkhannock, Wyoming County, Pennsylvania 18657

PREAMBLE

WHEREAS, severe storms and flooding during the period of October 20-21, 2016 resulted in the federally declared disaster DR-4292-PA, making Hazard Mitigation Grant Program (HMGP) funding available in Pennsylvania; and

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security proposes to administer Federal disaster assistance through FEMA's HMGP pursuant to the Robert T. Stafford Disaster Relief and Emergency Act, 42 U.S.C. §§5121-5207 (Stafford Act) through the Pennsylvania Emergency Management Agency (PEMA) to the County of Wyoming for the demolition of the structures at 45 Church Road, Tunkhannock, Wyoming County, Pennsylvania, 18657 (Undertaking), that is partially located in the 100-year floodplain; and

WHEREAS, FEMA has defined the Undertaking's area of potential effects (APE) as the site of 45 Church Road, Tunkhannock, Wyoming County, Pennsylvania, 18657 which is located on a 0.3 acre parcel that includes land on both the northwest and southeast sides of Church Road; and

WHEREAS, FEMA, in consultation with the Pennsylvania State Historic Preservation Officer (SHPO), has determined that the W.A. Dana Residence, 45 Church Road, PA SHPO Key # 209675, located on the northwest side of Church Road, is individually eligible for listing in the National Register of Historic Places (NRHP) (historic property); and

WHEREAS, FEMA, in continued consultation with the SHPO, has determined that the W.A. Dana Barn, 45 Church Road, located on the southeast side of Church Road, is a contributing resource to the W. A. Dana property;

WHEREAS, FEMA has determined that the Undertaking will have an Adverse Effect on the historic property, and the SHPO has concurred with this determination in accordance with the *Programmatic Agreement Among the Federal Emergency Management Agency, the Pennsylvania State Historic Preservation Officer, the Pennsylvania Emergency Management Agency, and the Seneca Nation of Indians of New York* (Statewide PA), executed March 29th, 2018; and

WHEREAS, FEMA notified the Federally-recognized Seneca Nation of Indians of New York (Seneca Nation), a signatory to the FEMA Statewide PA, in correspondence dated August 8, 2019, of the Adverse Effect on the historic property and FEMA's determination in consultation with SHPO that the Undertaking would result in No Historic Properties Affected (archaeology); and the Seneca Nation has expressed that they have no immediate concerns with regard to traditional cultural properties, sacred sites or Native American archaeological sites within the

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boundaries of the proposed project area; and

WHEREAS, FEMA, in consultation with the SHPO, notified potential consulting parties of the adverse effect in correspondence dated April 30, 2019 and invited participation in development of the Memorandum of Agreement (MOA); and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), FEMA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii) in their letter dated September 28, 2020; and

WHEREAS, an executed copy of this Agreement will be filed with the ACHP pursuant to 36 C.F.R. § 800.6(b)(1)(iv); and

WHEREAS, FEMA provided a public comment period of two weeks and held a virtual public meeting regarding the Undertaking in Tunkhannock, Wyoming County, Pennsylvania, on December 1, 2020; and

WHEREAS, FEMA has consulted with the SHPO, PEMA, the County of Wyoming, the Wyoming County Historical Society, and the Endless Mountains Heritage Region regarding the effects of the undertaking on historic properties; and

WHEREAS, FEMA has consulted with the Northern Tier Regional Planning and Development Commission regarding the effects of the undertaking on historic properties and has invited them to concur with the terms of this MOA as provided by 36 CFR §800.6(c)(3); and

WHEREAS, all references to time periods in this MOA are in calendar days and notices and other written communications to FEMA may be submitted by e-mail; and

NOW, THEREFORE, FEMA, the SHPO (signatories), PEMA, the County of Wyoming, the Wyoming County Historical Society, and the Endless Mountains Heritage Region (invited signatories) agree that the Undertaking shall be implemented in accordance with the following stipulations in order to mitigate the effect of the Undertaking on historic properties.

STIPULATIONS

To the extent of its legal authority and in coordination with, the SHPO, PEMA, the County of Wyoming, the Wyoming County Historical Society, and the Endless Mountains Heritage Region, FEMA will require that the following measures are implemented:

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I. Mitigation Measures: The County of Wyoming shall acquire and retain ownership of the 45 Church Road site until all treatment measures to be executed are complete. Following project closeout, Wyoming County plans to transfer ownership of the subject property to Eaton Township. All measures shall be funded by FEMA's Hazard Mitigation Grant Program and completed within twenty-four (24) months from the date of execution of this MOA.

A. Recordation: Upon execution of this MOA, FEMA shall submit its completed photographic and written documentation of the two buildings comprising 45 Church Road, as required in Appendix C.A.1 (Treatment Measures) of the Statewide PA, to the SHPO, the Wyoming County Historical Society, and the Tunkhannock Library. PEMA and the County of Wyoming shall provide right of entry documentation to enable FEMA to adequately photograph the property. FEMA will take photographs of the following views of both buildings:

1. Elevation/oblique of the four primary facades
2. Detail of main entrance
3. Detail of windows
4. Representative interior views (if accessible)
5. Any additional significant detail identified by consulting parties during the site visit.

The documentation packages shall be delivered to interested parties in the following formats:

- SHPO: digital only
- Wyoming County Historical Society: digital and print
- Tunkhannock Library: digital and print

B. Public Interpretation: In accordance with Appendix C.B. (Treatment Measures) of the Statewide PA, upon execution of this MOA, the County of Wyoming shall install an interpretive sign at the subject property location. The sign shall include a historic narrative and photographs relating to 45 Church Road and its context, to be provided by FEMA. When possible, Wyoming County Historical Society shall supply high-resolution scans of archival materials upon request for signage content. The design may also include architectural elements salvaged from the two buildings. The sign shall be maintained by Eaton Township.

1. FEMA shall provide an opportunity for the SHPO and consulting parties to review and comment on the design of the interpretive sign at the conceptual, draft and draft final stages of development.
2. SHPO and consulting parties will have 30 calendar days from the confirmed receipt of the interpretive panel information content and design to provide

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comments. If comments are not received at the end of the 30 calendar days, FEMA will assume concurrence and transfer sign content to Wyoming County and/or its contractor for installation.

3. FEMA will provide a written response to any comments proposed by the SHPO or consulting parties within 30 calendar days from the confirmed receipt of the comments. The response will address the comments posed by the SHPO or consulting parties with either acceptance or justification for why the comments cannot be incorporated.

C. Salvage: During demolition, the County of Wyoming shall salvage character-defining architectural features of 45 Church Road. The Wyoming County Historical Society has agreed to take ownership of these features and maintain them in the interest of preservation and public awareness.

1. PEMA and the County of Wyoming shall arrange a site visit for FEMA and the Wyoming County Historical Society to identify character-defining architectural features for both buildings at 45 Church Road. FEMA and the Wyoming County Historical Society shall provide to the County of Wyoming a detailed list with photographs indicating features to be salvaged.
2. The County of Wyoming via their contractor shall take all necessary measures to remove intact character-defining architectural features of the 45 Church Road buildings as identified by FEMA and the Wyoming County Historical Society.
3. The Wyoming County Historical Society will assume ownership of salvaged architectural features with no intent for monetary gain resulting from ownership of salvaged materials.

II. Public Involvement: FEMA conducted a virtual public meeting via Zoom on December 1, 2020, 7:00 P.M., which was advertised in the *Wyoming County Press Examiner*. Public comments were accepted orally and in writing at the public meeting and during the public comment period from November 23, 2020 to December 11, 2020. Copies of the MOA were available for review on the FEMA Region 3 website and on the PEMA and Wyoming County Historical Society websites.

III. Post Review Discoveries

- A. Wyoming County shall ensure that should previously unidentified archaeological sites or unanticipated effects be discovered during implementation of the Undertaking, the contractor shall immediately cease demolition activities in the vicinity of the discovery. Personnel should take all reasonable measures to avoid or minimize harm to the archaeological find(s) and/or avoid or minimize further unanticipated effects.

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- B. The person or persons encountering such sites or effects shall immediately notify PEMA who will contact Tessa Nolan, FEMA Region III Regional Environmental Officer, at 267-239-6850, and the SHPO at 717-783-8947. Demolition in the area of such sites or effects shall not resume until FEMA determines that the requirements of 36 CFR §800.13(b)(3) and Stipulation III.B, Unexpected Discoveries, Previously Unidentified Properties, or Unexpected Effects of the Statewide PA, have been met.

IV. Anticipatory Actions

- A. FEMA shall not grant assistance to the County of Wyoming should they, or those acting on their behalf, engage in anticipatory actions with the intent to avoid the requirements of this MOA or any requirements of Section 106 of the National Historic Preservation Act (NHPA).
- B. After consultation with the SHPO and the Advisory Council on Historic Preservation (ACHP), however, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created and shall complete consultation for the Undertaking.

V. Duration of Agreement

- A. This MOA will be null and void if its terms are not carried out within twenty-four (24) months from the date of execution unless amended in accordance with Stipulation VIII, Amendments.
- B. If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to Stipulation VIII.

VI. Reporting Requirements

- A. Every six months following the execution of this MOA until it expires or is terminated, those signatories and invited signatories who have assumed responsibility for specific treatment measures outlined in this MOA will provide the other signatories with a treatment measure status report.
- B. Review of Six-Month Report: Within fifteen (15) days of receipt, the signatories and invited signatories will review the treatment measure status report and provide written feedback to the responsible parties. The signatories may request a conference call to discuss the report content and discuss the implementation of this MOA.

- 1. Each status report will include the following information:

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- a. Status of treatment measure completion, including completion dates.
- b. Anticipated schedule for completion.

VII. Dispute Resolution

- A. If any objection or dispute should be put forth by a signatory, invited signatory, or concurring party within the time frame provided by this MOA to any plans, specifications, or actions provided for review pursuant to this MOA, FEMA will consult further with the objecting party to seek resolution.
- B. If FEMA determines that the dispute cannot be resolved, FEMA shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR §800.11(e), including FEMA's proposed resolution of the dispute. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP will either:
 1. Advise FEMA that it concurs with FEMA's resolution to the dispute; or
 2. Provide FEMA with recommendations, which FEMA will take into consideration in reaching a final decision regarding the dispute; or
 3. Notify FEMA that it will comment pursuant to 36 CFR §800.7(c), and proceed to comment. Any comment provided will be taken into consideration by FEMA in accordance with 36 CFR §800.7(c) (4) with reference to the subject of the dispute.
- C. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and FEMA's responsibility to fulfill all actions that are not subject of the dispute will remain unchanged.
- D. Failure to fulfill the terms of this MOA requires that FEMA again request ACHP's comments in accordance with 36 CFR §800.7.
- E. If FEMA cannot fulfill the terms of this MOA, it shall not take or sanction any action or make any irreversible commitment.

- VIII. Amendments:** Any signatory or invited signatory to this MOA may propose in writing to FEMA that the MOA be amended, whereupon FEMA will consult with all signatories to the MOA to consider such an amendment. 36 CFR §800.6(c)(1) shall govern the execution of any such amendment. The signatures of all the signatories shall be required for any amendment hereto to be effective. The amendment will be effective on the date a copy signed by all of the signatories and invited signatories is filed with the ACHP.

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IX. Termination and Non-Compliance

- A. If any signatory or invited signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VIII, above.
- B. If within thirty (30) days an amendment cannot be reached, any signatory or invited signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, FEMA must either (a) seek to resolve the adverse effects pursuant to 36 CFR §800.6(b) or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7. FEMA shall notify the signatories as to the course of action it will pursue.

X. Execution of the Memorandum of Agreement

- A. This MOA will be executed in counterpart, with a separate page to be signed by each signatory, invited signatory, and concurring party. The MOA will become effective on the date of the final signature by the signatories and invited signatories.
- B. FEMA will provide each signatory, invited signatory, and concurring party with a signed original of this MOA and will file a copy of the MOA with the ACHP.
- C. Execution and implementation of this MOA evidences that FEMA has taken into account the effects of the Undertaking on historic properties, has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that FEMA has satisfied its Section 106 responsibilities for all aspects of the Undertaking.

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EXECUTED:

SIGNATORY:

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: _____ **Date:** _____
Name
Title

DRAFT