

MEMORANDUM OF UNDERSTANDING

between

The Wampanoag Tribe of Gay Head-Aquinnah

and

The Massachusetts Army National Guard

for

Cultural Resource Planning and Management



WHEREAS the Massachusetts Army National Guard (MAARNG) owns, uses and controls land for the purposes of federal military training and related activities and conducts training and support operations on lands other than those owned or controlled by the MAARNG in the State of Massachusetts, AND

WHEREAS the Massachusetts National Guard recognizes the status of the Wampanoag Tribe of Gay Head-Aquinnah (TRIBE) as a Sovereign Nation and a federally recognized Indian Tribe, AND

WHEREAS the MAARNG recognizes that it has an obligation pursuant to federal law, policy and executive orders to provide timely and meaningful opportunities for the tribes participation and input on MAARNG activities or determinations that impact, or may potentially impact, the Tribe, AND

WHEREAS the MAARNG and the Wampanoag Tribe of Gay Head-Aquinnah AGREE that the military training activities of the Massachusetts Army National Guard may from time to time affect cultural resources affiliated with the Wampanoag Tribe of Gay Head-Aquinnah, and its non-federally recognized sister Tribe, The Mashpee Wampanoag, including Traditional Cultural Properties, properties of traditional religious and cultural importance, sacred sites, human remains and associated cultural items, AND

WHEREAS the MAARNG recognizes the Wampanoag Tribe of Gay Head-Aquinnah's, here after referred to as the Wampanoag Tribe, special expertise with respect to the cultural resources set forth in the foregoing paragraph, AND

WHEREAS the MAARNG seeks to work cooperatively with the Wampanoag Tribe in managing affiliated cultural resources on land under MAARNG's ownership and control and on lands other than those owned or controlled by MAARNG but used for training and support operations by MAARNG, and in meeting all legal requirements, policies, guidance applicable to conservation, protection and management of Tribal cultural resources; AND

WHEREAS the Wampanoag Tribe and MAARNG have consulted on a government-to-government basis and mutually agree on the principles set forth in this document, NOW, THEREFORE: the MAARNG and the Tribe agree that the following principles and procedures will guide conservation, protection and management of affiliated cultural resources on land under the ownership or control of the MAARNG and on other lands other than those owned or controlled by the MAARNG but used for training and support activities:

The MAARNG, in consultation with the Wampanoag Tribe, shall establish procedures for Such procedures will be incorporated into the MAARNG Integrated Cultural Resource Management Plan (ICRMP) and shall follow and adhere to the regulations and guidelines in regard to federally recognized Indian Tribes as published in AR 200-4 and DA-PAM 200-4 and all other applicable federal laws, policies, guidance and executive orders.

- The MAARNG shall consult with the Wampanoag Tribe in development of the Massachusetts Army National Guard's Integrated Cultural Resources Management Plan (ICRMP). The Tribe shall have a timely and meaningful opportunity for review, comment and input at all phases of plan development that include issues pursuant to Wampanoag cultural resources, including scoping sessions, as well as, suggested levels and locations for surveys.

The MAARNG will not complete the ICRMP without first soliciting, considering, and responding to the written comments of the Wampanoag Tribe. The FINAL ICRMP shall, to the greatest extent practicable, reflect the mutual agreement of the MAARNG and the Wampanoag Tribe regarding management of affiliated cultural resources. During the course of ICRMP preparation and implementation, the following procedures will be followed to avoid conflicts over management of affiliated cultural resources:

The MAARNG shall require their contractor(s) TO provide a monthly report to the Wampanoag Tribe's Designated Historic Preservation Officer and the Tribal Chairperson, summarizing cultural resource management activities and other undertakings as may be applicable, to Traditional Cultural Properties or potential cultural properties locations and findings of such, both pre-historic and historic during the annual field survey period or when any undertakings or action takes place which may or will affect Traditional Cultural Properties, properties of traditional, religious, and cultural importance, sacred sites, human remains or associated cultural items.

The MAARNG will provide an annual report to the Wampanoag Tribe, but not limited to, dispositions, treatment, and curation, that includes the site locations and all other pertinent information on sites including, present and ongoing surveys conducted by their archaeology contractor.

The Wampanoag Tribe agrees to make A good faith effort to respond within thirty (30) days or less, where feasible and warranted, to requests for information from MAARNG for, consultation, or concurrence in relation to issues of Traditional Cultural Properties, sacred sites, burials or human remains.

The Wampanoag Tribe agrees to protect the confidentiality of site locations by limiting access to such information to the Wampanoag Tribe's Designated Historic Preservation Officer, Tribal Chairperson, and the Tribal Council. The MAARNG agrees to protect the confidentiality of site locations by limiting access to such information to only necessary National Guard operations, the SHPO, and the Wampanoag Tribe, to the greatest extent allowed by law.

The MAARNG recognizes that present and future surveys cannot identify all surface and sub-surface Traditional Cultural Properties, properties of traditional, religious and cultural importance, sacred sites, human remains and associated cultural items, and that such properties may be discovered through future cultural resource management activities or other training related ground disturbing activities. The Wampanoag Tribe agrees that the process created pursuant to this agreement shall be followed, and will not exceed thirty (30) days without further agreement of the parties.

If the MAARNG, at any time, unintentionally discovers, or seeks to intentionally excavate human remains, it will immediately notify the Wampanoag Tribe's Designated Historic Preservation Officer and Tribal Chairperson along with appropriate law enforcement and other local and state agencies, cease activities that could impact such remains, consulting with the Wampanoag Tribe on a government-to-government basis in recognition of the Sovereign status of the Wampanoag, and secure and safeguard the site. Activities in the vicinity of the site shall then cease until such time as the Wampanoag Tribe's Designated Historic Preservation Officer and National Guard Cultural Resource Officer can arrange for mutual inspection of the site and proper disposition.

The MAARNG shall at each site ensure that human remains and cultural items (i.e. associated and unassociated grave goods, sacred objects, and objects of cultural patrimony) are secured, treated and repatriated in accordance with the provisions of the Native American Graves Protection and Repatriation Act, its implementing regulations and Army Regulation 200-4 and DA-PAM 200-4.

The MAARNG agrees, for purposes of compliance with Section 106 of the National Historic Preservation Act, that the Wampanoag Tribe shall be included as a concurring party and signatory on all Memoranda of Agreement and Programmatic Agreements, or similar documents, for undertakings affecting Tribally affiliated Traditional Cultural Properties, properties of traditional, religious and cultural importance, sacred sites, human remains and associated cultural items. The MAARNG shall consult with the Wampanoag Tribe, on all no effect, beneficial effect, no adverse effect, and adverse effect determinations for undertakings with potential to impact Traditional Cultural Properties and sacred sites.

The parties to this agreement designate and mutually recognize and endorse the following points of contact for purposes of carrying out any communication and consultation necessary for implementation of the principles and processes of this agreement.

Matthew J. Vanderhoop
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head-Aquinnah

Cultural Resource Management Officer
Massachusetts Army National Guard

The afore mentioned points of contact shall refer matters arising under this agreement to higher National Guard and Tribal Authority as the occasion and/or protocol demand. Should the MAARNG point of contact change, the MAARNG agrees that it shall contact the Wampanoag Tribe and inform the Tribal Chairperson regarding the appointment of a new point of contact. The Wampanoag Tribe agree that should their point of contact change, they shall inform the Massachusetts Army National Guard and the Adjutant General regarding the appointment of a new point of contact.

Flora and Fauna identified by species and locations must be included in any survey leading to or incorporated in development of an ICRMP. Such information shall be shared with the Wampanoag Tribe's Designated Historic Preservation Officer and the Tribal Chairperson and held confidential by the Massachusetts Army National Guard when such flora and fauna are of cultural importance to the tribe.

Although the DOD Secretary's Professional Qualifications and Standards do not apply to a federally recognized Indian tribe that has agreed to provide expertise, information or technical assistance regarding Traditional Cultural Properties and Sacred Sites, the Wampanoag Tribe agrees to this provision.

Consultation between the Massachusetts Army National Guard Cultural Resource Officer and the Wampanoag Tribe and their Designated Historic Preservation Officer shall be conducted to review no effect, beneficial effect, no adverse effect, and adverse effect determinations to a Traditional Cultural Property or Sacred Site or a nomination to the National Register of Historic Places. Such consultation shall give signatory authority to any Memorandum of Agreement or Programmatic Agreement as is referenced in AR 200-4 and DA-PAM 200-4. The Massachusetts Army National Guard AGREES that in all consultations, including review of individual undertakings pursuant to 36 CFR 800, the Tribe shall be invited to concur or not to concur in any Memorandum of Agreement, Programmatic Agreement or other pertinent documents that have the potential to affect Wampanoag Cultural Resources.

The Massachusetts Army National Guard ICRMP will be developed in a context, regarding Traditional Cultural Properties and Sacred Sites that reflect Tribal Cultural Values.

Nomination/eligibility to National Register of Historic Places.

While the Wampanoag Tribe Indians acknowledge that the only person delegated statutory authority to sign National Register of Historic Places nominations is the Deputy Assistant Secretary of the Army, the Tribe does, however, reserve the right, as it is expressed in the National Historic Preservation Act and Sections 60.11 and 60.12 of 36 CFR 60, to concur or not to concur in preparation of recommendations for nomination to the National Register of Historic Places in consultation with the MAARNG when such is related to, or in regard of, those elements which are Traditional Cultural Properties, Sacred Sites, or of Traditional Cultural Value to the tribe, and further reserves the right of appeal as referenced in 36 CFR 60.

Nominations to the National Register of Historic Places on Traditional Cultural Properties and Sacred Sites can only be submitted if mutually agreed upon by both the MAARNG and the Wampanoag Tribe.

It is neither the intent, nor is in the interest of the Wampanoag Tribe of Gay Head-Aquinnah, to act as representatives of any other federally recognized Indian tribe without their express authorization in writing. It is understood that this document may be employed in whole or in part, MADE into separate agreements made by other federally recognized Indian tribes and the Massachusetts Army National Guard and/or the other elements of the Department of Defense or any other federal agency.

MAARNG agrees that Traditional Cultural Properties will be defined by the Wampanoag Tribe and include but are not limited to:

Any pre-historic or historic site location and its components, which relate, or may relate to the Wampanoag Tribe and their ancestral kin groups, clans, or tribes.

Artifacts with surface or sub-surface locations.

Man-made or natural features including dwellings, mounds and other earth works.

Certain trees, shrubs, and plants.

Certain stones, minerals, and fossils.

Animal parts either terrestrial or marine.

MAARNG AGREES THAT Sacred Sites can only be designated on a case by case basis by the Wampanoag Tribe Designated Historic Preservation Officer and with the concurrence of the Wampanoag Tribal Chairperson and Tribal Council, as they may relate to the Wampanoag Tribe.

MAARNG agrees that Executive Order 13007 expresses in general the parameters of sacred sites and expresses the accommodations that must be made for access, use and protection of such sacred sites.

The parties agree that this Memorandum of Understanding shall take effect on the date it is signed by the Adjutant General of the Massachusetts Army National Guard and the Chairperson of the Wampanoag Tribe as properly witnessed and shall remain in effect until 01 January 2010 unless properly terminated by either party. This Memorandum of Understanding may be extended and/or amended past that date by accord of both parties.

If at any time during implementation of this Memorandum of Understanding, either party raises an objection, both agree to appropriate consideration and consultation intended to resolve the objection.

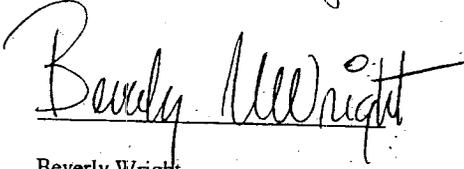
The Massachusetts Army National Guard and/or the Wampanoag Tribe of Gay Head-Aquinnah may terminate this Memorandum of Understanding by providing sixty- (60) working days notice to the other signatory party by Registered Mail. After such notification, but prior to the date of termination, both parties shall within ten (10) working days of notification, set a mutual date to consult and seek a satisfactory solution that would avoid termination.

Nothing in this agreement prohibits or reduces either party's right to full lawful remedy or recourse for failure to comply with any and all terms agreed to herein.

NOW THEREFORE, it is agreed that the MAARNG and the Wampanoag Tribe of Gay Head-Aquinnah will jointly cooperate to achieve the principles and purposes set forth in this Memorandum of Understanding.

Signed this 30th day of Aug, 2001.

Signed this 30th day of Aug, 2001



Beverly Wright
Chairperson
Wampanoag Tribe of Gay Head-Aquinnah



BG George W. Keefe
The Adjutant General
Massachusetts Army National Guard

Witnesses:

