

**MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW YORK CITY MAYOR’S OFFICE OF MANAGEMENT & BUDGET
AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER REGARDING
THE WORKER’S OPERATION CENTER (AKA SITE OPERATIONS CENTER) PROJECT
LOCATED AT THE NEW YORK BOTANICAL GARDEN IN THE BRONX, NEW YORK
24PR00712**

WHEREAS, pursuant to the Consolidated Appropriations Act, 2023 (Public Law 117-328) Congress made funding available, in the amount of \$2,000,000, for the New York Botanical Garden (“NYBG”) Worker’s Operation Center project; and

WHEREAS, funds will be administered by the Department of Housing and Urban Development (“HUD”) through Community Project Funding (“CPF”) awards; and

WHEREAS, the undertaking consists of the demolition of an existing structure (i.e. the “New York Botanical Garden, Operations Lower Garage Building”) for the construction of a new net-zero energy (“NZE”) building (i.e. the “Worker’s Operation Center aka Site Operations Center”); and

WHEREAS, the undertaking’s area of potential effects (“APE”) consists of the area from Magnolia Way to the north, south, and west, and the Southwest Bronx River Parkway to the east, known as the New York Botanical Garden’s Operations Yard; and

WHEREAS, the United States Congress has authorized HUD to delegate legal responsibility for compliance with Section 106 of the National Historic Preservation Act (NHPA, codified at 54 USC 306108, and herein “Section 106”) to a local government through the Housing and Community Development Act of 1974; and

WHEREAS, HUD has granted the New York City Mayor’s Office of Management and Budget (“OMB”) the authority under 24 CFR Part 58 to serve as the Responsible Entity (“RE”) for CPF program activities in New York City and, in accordance with 24 CFR 58.2(a)(7), as the lead agency responsible for environmental review, decision-making, and action under 42 U.S.C. 5304(g); and

WHEREAS, OMB has agreed to take into account the effects of its undertakings and satisfy its Section 106 responsibilities, OMB, therefore, is the agency responsible for compliance with NEPA and Section 106; and

WHEREAS, OMB, in consultation with the New York State Historic Preservation Office (“SHPO”), has determined that the undertaking may have an adverse effect on the NYBG, which is listed in the National Register of Historic Places, and has determined that it is appropriate to enter into this Memorandum of Agreement (“MOA”) as the project involves a specific undertaking with a defined beginning and conclusion, where adverse effects are understood; and

WHEREAS, the project is located within the identified area of interest of four federally recognized Indian tribes, and OMB has consulted with the Delaware Nation, the Delaware Tribe of Indians, the Shinnecock Nation, and the Stockbridge-Munsee Band of Mohicans on a government-to-government basis pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the Delaware Nation and the Stockbridge-Munsee Band of Mohicans requested that their inadvertent discovery policies be followed, in the event of an inadvertent discovery of human remains or cultural materials. The Stockbridge-Munsee Band of Mohicans also requested to be notified in the event of a change in scope or APE, and asked heavy machinery be used with care, both inside and outside the APE, to prevent unintended impacts to cultural resources; and

WHEREAS, OMB has consulted with the New York Botanical Garden and the New York City Department of Cultural Affairs regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as invited signatories; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), OMB has notified the Advisory Council on Historic Preservation (“ACHP”) of its adverse effect determination with specified documentation, and the ACHP has chosen *not to* participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, OMB and the SHPO agree that the 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

NYBG shall complete the following and shall inform OMB and SHPO when the required measures are carried out:

- I. Documentation (HABS Level II) of the structure to be demolished prior to demolition.

- a. Printed and digital versions of the documentation are to be submitted to SHPO electronically.
 - b. Documentation is to be officially sent to the Library of Congress. Provide receipt of all Library of Congress submissions to the SHPO electronically.
- II. Protective measures for adjacent historic properties and settings to remain.
 - a. Submit the finalized Construction Protection Plan (CPP) to SHPO. The CPP shall follow the preventive treatment measures found in Preservation Tech Notes, Temporary Protection No. 3 by Chad Randl, Technical Preservation Services, National Park Service.
- III. Continued consultation with SHPO for the design of the new building.
- IV. Explore salvage and re-use of the historic materials in the new structures or an on-site interpretative display. If not feasible, NYBG will provide documentation of this to OMB and SHPO.
- V. To the extent possible, use of heavy machinery will be limited, in order to avoid unintended impacts to cultural resources.
- VI. If it is determined that a change of scope or APE is needed, OMB shall be notified, prior to any activities occurring which are not included in this MOA. OMB shall immediately consult with the Stockbridge-Munsee Band of Mohicans, before additional activities can be implemented.

IV. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the MOA may be amended in accordance with Stipulation VIII below.

V. POST-REVIEW DISCOVERIES

If during the implementation of any activities covered by this MOA, a known adjacent or nearby historic property may be impacted due to project activities, work must stop as quickly as feasible, and all signatories must be notified by NYBG. Within 48 hours of notification, OMB shall consult with SHPO to ensure the appropriate measures are employed in order to protect historic resources to the extent feasible given the circumstances.

If an inadvertent discovery of human remains or cultural materials are identified, work must stop immediately and all signatories must be notified by NYBG within 24 hours. Within 24 hours of receiving notification, OMB shall inform the Delaware Nation, the Delaware Tribe of Indians, the Shinnecock Nation, and the Stockbridge-Munsee Band of Mohicans of the discovery. NYBG shall ensure the inadvertent discovery policies of the

Delaware Tribe and the Stockbridge-Munsee Band of Mohicans are to be followed, as seen in Appendix A.

In the event OMB receives notification that human remains have been discovered, in addition to the aforementioned actions, OMB shall notify the New York Police Department within 24 hours, which shall then notify the Office of the Chief Medical Examiner to determine if the remains are of forensic interest. If they are of forensic interest, they will determine the ensuing process.

VI. MONITORING AND REPORTING

Every two years following the execution of this MOA until it expires or is terminated, NYBG shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the effort to carry out the terms of this MOA. OMB, as the RE, shall ensure reports are completed and shall keep a record of these reports.

VII. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object in writing to OMB, to any actions proposed or the manner in which the terms of this MOA are implemented, OMB shall consult with such party to resolve the objection. If OMB determines that such objection cannot be resolved, OMB will:

A. Forward all documentation relevant to the dispute, including the OMB's proposed resolution, to the ACHP. The ACHP shall provide OMB with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, OMB shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. OMB will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, OMB may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, OMB shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. OMB's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VIII. AMENDMENTS

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.

IX. TERMINATION

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 signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (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.

Once the MOA is terminated, and prior to work continuing on the undertaking, OMB must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. OMB shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the OMB and SHPO and implementation of its terms evidence that OMB has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

Signature Pages to Follow

SIGNATORIES:

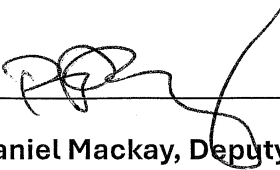
NYC Office of Management & Budget

J. Freeman

Date 4/10/2026

Julie Freeman, OMB-Managed Grants

New York State Historic Preservation Office



Date 2/18/26

R. Daniel Mackay, Deputy Commissioner, State Historic Preservation Officer

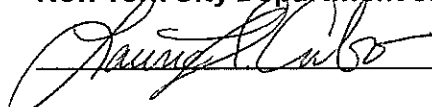
INVITED SIGNATORIES:

New York Botanical Garden

 _____ Date 2/17/26

**Ursula Hoskins, Vice President of Capital Planning, Construction and Operations &
Chief Sustainability Officer**

New York City Department of Cultural Affairs



Date 07/25/26

Laurie Cumbo, DCLA Commissioner

APPENDIX A

INADVERTENT DISCOVERY POLICIES

- I. Stockbridge-Munsee Community Band of Mohican Indians - Policy for Treatment and Disposition of Human Remains and Cultural Items That May be Discovered Inadvertently**



**Stockbridge-Munsee Community
Band of Mohican Indians
Policy for
Treatment and Disposition of Human Remains and Cultural Items
That May be Discovered Inadvertently**

Purpose

The purpose of this policy is to outline procedures that will be followed by all agencies, contractors or others in the event of an inadvertent discovery of human remains or cultural materials that are identified as potentially Stockbridge-Munsee (Mohican).

Treatment and Disposition of Human Remains and Cultural Items

- 1) The federal agency or contractor shall contact the Stockbridge-Munsee Community immediately, but no later than three days after the discovery of the remains and/or artifacts at the contact information below:

updated September 2022

Jeff Bendremer, Tribal Historic Preservation Officer (THPO)	thpo@mohican-nsn.gov	413-884-6029 office 715-881-2254 cell
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If unavailable, contact:

Bonney Hartley, Tribal Historic Preservation Manager	Bonney.Hartley@mohican-nsn.gov	413-884-6048 office
Monique Tyndall, Cultural Affairs Director	Monique.Tyndall@mohican-nsn.gov	715-793-4270 office
Linda Mohawk Katchenago, Administrator	Linda.Katchenago@mohican-nsn.gov	715-793-4355 office

- 2) Place tobacco with human remains and/or funeral objects.
- 3) Cover remains and funeral objects with a natural fiber cloth such as cotton or muslin when possible.
- 4) No photographs will be taken.
- 5) The preferred treatment of inadvertently discovered cultural materials and/or human remains is to leave them *in-situ* (in place) and protect them from further disturbance.
- 6) Non-destructive "in-field" documentation of the remains and cultural items shall be carried out only in consultation with the Tribe, who will determine appropriate methods of recordation depending upon the circumstances.
- 7) If the remains and cultural items are to remain *in-situ*, the requirements of 43 CFR 10 Sections 10.4–10.6 will have been fulfilled.
- 8) The specific location(s) of discovery shall be withheld from disclosure (with the exception of local law officials and tribal officials as described above) and protected to the fullest extent by federal law.
- 9) If remains and funeral objects are to be removed from the site, specific procedures and considerations will be determined by Stockbridge-Munsee Tribe in consultation with the federal agency.

II. DELAWARE NATION HISTORIC PRESERVATION Inadvertent Discovery Policy & Protocols for Archaeology Consultation

DELAWARE NATION HISTORIC PRESERVATION
Inadvertent Discovery Policy & Protocols for Archaeology Consultation

The purpose of this policy is to outline procedures and expectations for tribal consultation to be followed by all agencies, contractors, etc. during ALL archaeological work, and/or in the event of an inadvertent discovery of human remains or cultural archaeological materials affiliated as Native American within Delaware Nation's homelands and areas of interest.

Procedures for Inadvertent Discovery of Funerary Remains and Objects:

1. If ANY potentially sensitive Native American archaeological resources (see list on next page), human remains, or animal burials are encountered, all onsite work shall cease in the immediate area with a 50-foot buffer of the discovery location until Delaware Nation is consulted or unless prior agreements are in place. See list on next page for resources or feature warranting notification to our office.

2. The lead agency shall contact the following representatives immediately (concurrently with the SHPO):

Carissa Speck, *Historic Preservation Director*
cspeck@delawarenation-nsn.gov
405-901-1715 x 1301

Katelyn Lucas, *Historic Preservation Officer*
klucas@delawarenation-nsn.gov
405-544-8115

3. Place tobacco (looseleaf preferred) with human remains and/or funerary objects if possible, and cover and/or wrap them with a natural fiber cloth such as cotton or muslin (unbleached).

4. Absolutely NO photographs are to be taken of human remains, animal burials, or funerary objects, nor drawings made, unless deemed necessary in consultation with Delaware Nation. Any photographs or drawings should be redacted from any reports that will be broadly distributed, along with locational details. Just using written or textual descriptions of sites is preferred.

5. Human or animal remains and any items deemed funerary or sacred should NOT be cleaned or processed, and handling should be limited. Non-destructive "in-field" documentation of the remains and cultural items shall be carried out in consultation with Delaware Nation, who will determine appropriate methods of recordation depending upon the circumstances.

6. The preferred treatment of funerary materials and human or animal burials is to leave them in-situ (in place) and protect them from further disturbance. If remains and/or cultural items are to remain in-situ, the requirements of 43 CFR 10 Sections 10.4-10.6 will have been fulfilled.

7. Our preference is that NO remains or potential funerary artifacts should be taken off site and should be housed in on-site facilities until Delaware Nation consults on next steps. If remains or artifacts must be removed from the site, procedures must be determined in consultation with Delaware Nation. Delaware Nation requests that no artifacts, but especially funerary remains and objects, should ever be removed from the state they were found in, including for lab documentation or analysis purposes.

8. The specific location(s) of discoveries shall be withheld from public disclosure (with the exception of local law officials, necessary consulting agencies, and tribal officials as described above) and protected to the fullest extent by federal law.

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DELAWARE NATION HISTORIC PRESERVATION
Inadvertent Discovery Policy & Protocols for Tribal Consultation

Delaware Nation's Historic Preservation Office treats ALL discoveries of Native American materials or features during any archaeological survey work and/or data recovery work essentially the same as inadvertent discoveries. We request daily or weekly updates on what artifacts and features are found (if any) so that we can consult on ALL stages of the work. We may send tribal monitors to be onsite during work, but still request updates regardless of whether or not we sent monitors to ensure everyone is kept informed and given time to review findings. Even in data recovery work where we expect that artifacts and/or remains will need to be removed and relocated to avoid destruction, we still expect to be consulted throughout the process to ensure all potential funerary or otherwise sacred materials are identified correctly and handled properly.

General Guidelines for Archaeological Work:

- NO artifacts should be taken off site, cleaned, processed, or be subject to invasive/destructive analysis—and should be housed in the on-site facilities—until they are reviewed by consulting Tribal Nations. **We underscore NO cleaning until review**, for cleaning both disrespects tribal protocols for sensitive materials and could destroy valuable scientific evidence on materials
- Our preference if human remains, animal burials, and/or funerary objects are discovered is always to leave them in-situ, halt all further work (following procedures on previous page), and request that projects avoid further impacts to the site
- If, in consultation with Delaware Nation, it is determined that funerary remains or objects canNOT be left in-situ and must be removed to protect them from destruction:
 - Any soils or other materials collected with them or having touched them should be kept with them, as Delaware Nation will also want those repatriated. This includes ALL materials found in one soil profile above and below, even charcoal, soil samples, any debitage or other items

General Guidelines for Identifying Sensitive Materials:

Anything found within the same soil profile, or one soil profile above and below, of human remains OR animal burials is also considered funerary by our office and should be treated as such. We will want to review more closely anything else found within half a mile of the location so that we can assess the broader cultural landscape. Workers should be able to provide general information on where materials are being found even during ongoing work, so that we can flag other potentially sensitive sites. Below is a general list of items we would flag as sensitive **even if remains are not immediately present**, and request be treated as sensitive unless we receive additional information that would suggest otherwise.

- Human remains
- Animal burials or remains of unusual or non-food species (dog, eagle, hawk, bear, turtle, otter, fisher, bison)
- Shell middens
- Pottery in the following categories: complete pieces, pieces with effigies, large deposits, pieces intentionally/ceremonially broken
- Anything with carvings or effigies
- Crystals, fossils, fossilized teeth or bone
- Wampum or treaty medals
- ALL personal items: including beads, jewelry, pendants, earrings, mirrors, combs, pipes (either complete pipes or pipe fragments), and human or animal figures. Sensitive beads include beads made of shell, bone/ivory, clay, wood, stone, or glass. European trade beads were adopted by Native Americans and used for personal clothing, jewelry, and ceremonial pieces.
- Any metal or metal alloy materials including copper or brass wire, pendants, clothing adornments
- Any fabrics, textiles, and/or woven items including grass mats, especially if found in proximity to personal items
- Any materials with evidence of painting on them, painting making, or storage of paints, especially ochre
- Large deposits of debitage, points, tools, especially ones that look like they were intentionally/ceremonially broken
- Anything found with evidence of burning