

**MEMORANDUM OF AGREEMENT
BETWEEN
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER,
THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
AND THE TOWNSHIP OF MIDDLETOWN, BUCKS COUNTY
SUBMITTED TO
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE MIDDLETOWN TOWNSHIP PROPERTY ACQUISITION**

WHEREAS, the Federal Emergency Management Agency (FEMA) proposes to administer Federal disaster assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, to Bucks County (Applicant) through the Pennsylvania Emergency Management Agency (PEMA), for the acquisition and demolition of one residential structure located at 28 Bridgetown Pike, Middletown Township, Bucks County, Pennsylvania (Undertaking) that was damaged during disaster FEMA-1294-DR-PA (Hurricane Floyd); and WHEREAS, FEMA has determined that the Undertaking will have an effect upon a structure that is listed on the National Register of Historic Places as part of the Bridgetown Historic District, and has consulted with the Pennsylvania State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, as amended, implementing Section 106 of the National Historic Preservation Act (NHPA) (16 USC 479f); and

WHEREAS, PEMA and the Applicant participated in the consultation and have been invited to sign this Memorandum of Agreement (MOA); and

WHEREAS, FEMA has consulted with the Advisory Council on Historic Preservation (Council) and the Council determined that their participation was not necessary for the Undertaking at this time; and

WHEREAS, FEMA has determined that this structure has been subject to repetitive damage from flooding, and that relocation or elevation of the structure is not technically feasible;

NOW, THEREFORE, FEMA, SHPO, PEMA and the Applicant agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effects of the Undertaking on historic properties.

STIPULATIONS

To the extent of its legal authority and in coordination with SHPO, PEMA, and the Applicant, FEMA will ensure that the following stipulations are implemented:

I. ARCHAEOLOGICAL INVESTIGATION

Prior to demolition, FEMA shall ensure that an archaeological survey is conducted in the area of the project where ground disturbance may occur, and that the work is conducted in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for identification* (46 FR 44720-23) and taking into account the National Park Service's publication *The Archaeological Survey: Methods and Uses* (1978) and the Bureau for Historic Preservation / Pennsylvania Historical and Museum Commission's *Cultural Resource Management in Pennsylvania: Guidelines for Archaeological Investigations* (July 1991). This survey will include background research. Based on this investigation, archaeological testing may be conducted in all or a portion of the Area of Potential Effect (APE) to located subsurface deposits or resources. A report on the findings of the survey will be submitted to the SHPO, who will then have 30 days to review and accept the report, or provide comment.

If eligible archaeological resources are identified and will be affected by the project, FEMA will apply the Criteria of Adverse Effect in accordance with 36 CFR Part 800.5. If the project will have an effect on these resources, FEMA will make a reasonable effort to avoid these resources. If the eligible resources cannot be avoided, the effect will be adverse. If the resources are eligible chiefly for the significant information in prehistory or history they are likely to yield through data recovery, FEMA will ensure that they are treated in accordance with the criteria listed below. If archaeological resources are identified which are eligible for any other reason, FEMA shall comply with 36 CFR 800.6.

FEMA shall ensure that any human remains encountered during the archaeological investigations are brought to the attention of the SHPO and the Council within 24 hours of the discovery. The SHPO will respond within one working day. No activities that might disturb or damage the remains will be conducted until all parties have determined whether excavation is necessary and/or desirable. All procedures will follow the guidance outlined in the National Park Service publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) and the Pennsylvania Historical and Museum Commission's *Policy for the Treatment of Burials and Human Remains* (1993).

FEMA shall ensure that all final archaeological reports and public information materials resulting from actions pursuant to this Agreement will be provided to the SHPO for review and comment. All final data recovery reports will be completed and provided to the SHPO within two years of the completion of the archaeological fieldwork. The reports shall meet the professional standards set forth by the Department of the Interior's *Format Standards for Final Reports of Data Recovery Program* (42 FR 5377-79) and will be prepared in accordance with the Bureau for Historic Preservation / Pennsylvania State Historical and Museum Commission's *Cultural Resource Management in Pennsylvania: Guidelines for Archaeological Investigations* (July 1991). The SHPO will have 30 days to review and comment on all submissions.

II. RECORDATION

Prior to project implementation (after approval but before demolition), FEMA will ensure that the property is recorded in its present setting and context. Recordation will include:

- Archival quality photographs (35mm or large format black & white) of exterior elevations and streetscape photos keyed to a project site map, including nearby structures related to the subject structure.
- Archival quality photographs (35mm or large format black & white) of the associated nearby structures, photos keyed to a project map.
- A sketch floor plan of the property to scale.
- A brief architectural description and summary of the historical significance of the property.
- FEMA will ensure that one set of original prints, the photograph negatives, the floor plan sketches, and architectural description and summary is submitted to the SHPO for acceptance and retention in its permanent records. A second set will be provided to the Applicant.

III. SALVAGE

Following the completion of Recordation activities, the local historical society will be allowed the opportunity to salvage, at their own expense, any historically significant architectural features of

the property. The items selected shall be documented, marked, cataloged, and removed in a manner that minimizes damage.

IV. DEMOLITION

To ensure the protection of any prehistoric or historic archaeological resources that might be located in the project area, FEMA will require that the demolition of the structure be performed in a manner that minimizes ground disturbance. FEMA will require that any fill used for grading or ground restoration will be obtained from a previously disturbed off-site source, and that no on-site grading of previously undisturbed soil shall take place.

V. PUBLIC PARTICIPATION

The public and interested parties have been notified of the proposed project, and have had the opportunity to comment, as follows:

- Public Notice listed in the *Bucks County Courier Times* on April 28, 2000 invited any interested parties to comment on the proposed project.
- As of November 30, 2000, no citizen or organization has contacted FEMA, PEMA, Bucks County Commissioners, or Middletown Township Supervisor's Offices in opposition to the proposed project.

VI. POST-REVIEW DISCOVERIES

If previously unidentified historic properties or archaeological resources are discovered during ground-disturbing work related to the Undertaking, the Applicant shall stop that portion of the project immediately, contact the SHPO, and satisfy the requirements of 36 CFR Part 800.13.

VII. DISPUTE RESOLUTION

If any objection or dispute should arise 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. If FEMA determines that the dispute cannot be resolved, FEMA shall forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Part 800.11(e) including FEMA's proposed resolution of the dispute. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

- Advise FEMA that it concurs with FEMA's resolution to the dispute;
- Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the dispute; or
- Notify FEMA that it will comment pursuant to 36 CFR Part 800.7(c), and proceed to comment. Any comment provided will be taken into account by FEMA in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject of the dispute.
- Any recommendation or comment provided by Council 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.

Failure to fulfill the terms of this MOA requires that FEMA again request Council's comments in accordance with 36 CFR Part 800.7. If FEMA cannot fulfill the terms of this MOA, it shall not take or sanction any action or make any irreversible commitment that would result in an adverse effect with respect to eligible or designated historic properties covered by this MOA or would foreclose Council's consideration of modifications or alternatives to the Undertaking that could

avoid or mitigate the adverse effect until the comment process has been completed.

VIII. AMENDMENTS AND NON-COMPLIANCE

If any of the signatories to this MOA believe that the terms of the MOA cannot be adhered to, or that any amendment to the terms of this MOA must be made, that signatory shall immediately consult with the other signatories to develop amendments to this MOA. The process of amending this MOA shall be the same as that exercised in creating the original MOA. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation VI will be followed.

IX. ANTICIPATORY DEMOLITION

FEMA agrees that it will not grant assistance to an applicant who, with intent to avoid the requirements of this MOA or the NHPA, intentionally causes a significant adverse affect to the property listed in this MOA, or having legal power to prevent it, allows a significant adverse effect to occur. FEMA may, after consultation with Council, determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the Applicant. FEMA shall specifically advise PEMA of this requirement.

X. EXPIRATION OF AGREEMENT

This agreement shall expire if its terms are not carried out within one year from the date of execution, unless the signatories agree to an extension for fulfilling its terms. If the terms of this agreement have not been accomplished within one year, the dispute resolution process set forth in Stipulation VI will be followed.

XI. EXECUTION

Execution of this MOA by FEMA, SHPO, PEMA and the Applicant, and the subsequent filing of this MOA with the Council, and the implementation of its terms constitute evidence that FEMA has taken into account the effects of the Undertaking on historic properties, and that FEMA has satisfied its Section 106 responsibilities.

This MOA may be executed in parts, and FEMA will ensure that each party is provided with a copy of the fully executed MOA. This MOA will become effective on the date that it is signed by all the signatories.

**SIGNATORY RECORD FOR MEMORANDUM OF AGREEMENT
28 BRIDGETOWN PIKE
MIDDLETOWN, BUCKS COUNTY, PENNSYLVANIA**

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: _____ Date: _____
Gene Gruber
Regional Environmental Officer
FEMA Region III

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Brent D. Glass
Executive Director
Pennsylvania Historical and Museum Commission

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

By: _____ Date: _____
David Smith
Director

BUCKS COUNTY, PENNSYLVANIA

By: _____ Date: _____
Charles H. Martin
Chairman, County Commissioners