



Preserving America's Heritage

CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION
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An independent federal agency, the ACHP promotes the preservation, enhancement, and productive use of our nation's historic resources and advises the President and Congress on national historic preservation policy. It also provides a forum for influencing federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the administration's Preserve America initiative.

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Cover: The Tomb Monument at the Tomb of the Unknowns, Arlington National Cemetery
(Photo courtesy U.S. Army Corps of Engineers, Baltimore District)

ABOUT THIS REPORT

Section 106 of the National Historic Preservation Act requires federal agencies to consider historic preservation values when planning their activities. In the Section 106 process, a federal agency must identify affected historic properties, evaluate the proposed action's effects, and then explore ways to avoid or mitigate those effects.

The federal agency often conducts this process with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers, representatives of Indian tribes and Native Hawaiian organizations, and other parties with an interest in the issues.

Sometimes a Programmatic Agreement (PA) or a Memorandum of Agreement (MOA) is reached and signed by the project's consulting parties. A PA clarifies roles, responsibilities, and expectations of all parties engaged in large and complex federal projects that may have an effect on a historic property. An MOA specifies the mitigation measure that the lead federal agency must take to ensure the protection of a property's historic values.

Each year thousands of federal actions undergo Section 106 review. The vast majority of cases are routine and are resolved at the state or tribal level, without the ACHP's involvement. However some cases present issues or challenges that warrant the ACHP's involvement.

This report presents a representative cross-section of undertakings that illustrate the variety and complexity of federal activities that the ACHP is currently engaged in. In addition, the ACHP's Web site www.achp.gov contains a useful library of information about the ACHP, Section 106 review, and the national historic preservation program.

HAWAII

Project: Reopened Case: Amendment to 2006 Programmatic Agreement for Housing Privatization at Hickam Field, Hickam Air Force Base, Hawaii

Agencies: U.S. Air Force, Department of Defense

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Eight structures at Hickam Field at Hickam Air Force Base that contribute to a historic district are slated for privatization but were not included in a Programmatic Agreement signed in 2006. The solution is an amendment to the original agreement to include the buildings.

Eight buildings constructed for purposes including guest houses, storage, and electrical switching facilities that date from 1931 to the 1950s contribute to the Hickam Historic District and are facing privatization. An existing 2006 Programmatic Agreement (PA) will be amended to include them and assure they are covered by existing stipulations created for other historic properties.

This PA is a positive example of military privatization of housing that includes historic resources and can be broadly applicable to similar situations throughout the Department of Defense. The Air Force began consultation early in the process, allowing for meaningful input by the consulting parties in the development of the PA.

The Air Force conducted an inventory of historic



Hickam Historic District's central grass mall with the Hickam Water Tower, known as "Freedom Tower" (Photo courtesy U.S. Air Force)



The Hickam Historic District has a distinctive housing and streetscape design that will be better protected by the amended Programmatic Agreement. (Photo courtesy U.S. Air Force)

properties located within the potential leased premises and completed National Register of Historic Places eligibility determinations for the housing units and the Hickam Historic District. Privatization will include the restoration and rehabilitation of selected historic homes, the rehabilitation of the Hickam Historic District, and the restoration and adaptive reuse of a non-residential building. The lessee will prepare a long-range housing and community planning instrument to guide work on historic housing units, and the PA includes a list of undertakings that require no further review. Tenant leases will include additional restrictions and conditions relevant to the historic homes.

As mitigation, the Air Force committed to documenting selected historic homes under the Historic American Building Survey Level III guidelines. The effective consultation led to a strong agreement that will only be improved by amending it to include additional historic resources.

The Advisory Council on Historic Preservation first became involved in the case on August 3, 2004 and notified the Air Force of its interest in participating in the amendment to the PA on June 4, 2007. Other consulting parties included the Hawaii State Historic Preservation Officer, Historic Hawaii Foundation, the National Trust for Historic Preservation, and the Office of Hawaiian Affairs, the semiautonomous entity of the state of Hawaii charged with administering royal land held in trust for the benefit of Native Hawaiians.

MISSISSIPPI

Project: Ongoing Case: FEMA Funding for Debris Removal and Demolition of Damaged Buildings on Private Property

Agencies: Federal Emergency Management Agency, Department of Homeland Security

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The Federal Emergency Management Agency (FEMA) is nearing completion of a secondary Programmatic Agreement. It will govern the review of projects receiving public assistance funds for debris removal and demolition of damaged buildings on private property in Mississippi as a result of Hurricane Katrina in August 2005. As in the neighboring state of Louisiana, Hurricane Katrina's destruction was deeply felt in Mississippi's Gulf Coast communities where the storm completely demolished buildings. So severe was the damage that assistance for debris removal and demolition work on private property became the essential FEMA action.

The Federal Emergency Management Agency (FEMA) is providing public assistance funds to several communities along the Mississippi Gulf Coast for the demolition of severely damaged privately owned buildings. While an existing statewide Programmatic Agreement (PA) has helped guide recovery efforts in Mississippi, the

unprecedented nature of the situation requires much attention, and FEMA has worked on the development of a secondary PA.

The secondary PA provides for the following:

- a classification system for rating the level of hurricane damage to buildings, which FEMA will use in its decisions of whether to fund demolition of privately owned buildings;
- a streamlined State Historic Preservation Office (SHPO) review process for determinations of National Register eligibility and assessments of effects;
- a process for FEMA's consultation with Native American tribes about proposed debris removal and demolition work;
- an archaeological protocol for minimizing ground-disturbing activities during demolition work; and
- a range of programmatic treatment measures to mitigate adverse effects, including recordation, re-survey of existing historic districts; survey of undesignated historic properties; preparation of an Integrated Historic Properties Survey Report; placement of historic markers at destroyed exceptionally significant historic properties; and assistance to the SHPO in its efforts to establish a Geographic Information System (GIS) for Mississippi.

FEMA's assistance to the SHPO to create the GIS system is highly significant because it is consistent with one of the recommendations that came out of the Preserve America Summit, celebrating the 40th anniversary of



One street in Biloxi, Mississippi, showing damage from Hurricane Katrina. On the left, the aftermath of the storm on September 3, 2005, which left more than 45 million cubic yards of land-based debris in the state. On the right, taken August 9, 2006, the same street following cleanup efforts. (Photos courtesy FEMA)

the National Historic Preservation Act, held last October in New Orleans. That recommendation is to “create a comprehensive inventory of historic properties through a multi-year plan that expands current inventories and makes them more compatible and accessible.”

In addition to FEMA, other signatories to the agreement include the Advisory Council on Historic Preservation, the Mississippi SHPO, the Mississippi Emergency Management Agency, and the Mississippi Band of Choctaw Indians. Other consulting parties formally involved in development of the Mississippi Secondary PA include the National Trust for Historic Preservation, the city of Biloxi, and the city of Pascagoula. As this *Case Digest* goes to print, consultation on the PA continues with ratification expected in August 2007.

MISSOURI

Project: New Case: Development of a Programmatic Agreement Concerning Adverse Effects to Historic Properties in the Mark Twain National Forest

Agencies: U.S. Forest Service, Department of Agriculture

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Despite the fact that efforts toward creation of a Programmatic Agreement are in progress, concern over the fate of historic properties in the Mark Twain National Forest led the National Trust for Historic Preservation to include them on its “11 Most Endangered” sites list in June 2007.

The Mark Twain National Forest has a number of administrative buildings and facilities, as well as historic structures it has acquired through purchase, that it believes are either no longer needed due to changes in land management priorities and methods and the size and structure of the workforce, or because they cannot be maintained, preserved, rehabilitated, or restored due to limited resources and funding.

The Mark Twain National Forest has completed a facilities master planning (FMP) process in which it has identified what buildings are to be retained and what buildings are to be realigned through adaptive reuse, conveyance from federal ownership, or



Bussman Farm on the Mark Twain National Forest has been determined eligible for the National Register and is proposed for demolition.



A barn at the Kofal Farm on the Mark Twain National Forest. The farm has been determined eligible for the National Register.

disposal. Consultation has been initiated to develop a Programmatic Agreement (PA) to establish a procedure for the FMP process to comply with the Section 106 process. This has led the Mark Twain National Forest to agree to amend the FMP to incorporate considerations of historic value and the consideration of alternatives to demolition, such as the reuse of historic properties, in its planning process analysis. Consultation continues.

Some of the properties are listed on the National Register of Historic Places (NR), and others are eligible for listing. None of the properties are National Historic Landmarks.

The historic farmsteads and landscapes are intact examples of the pattern of late 19th and early 20th century rural vernacular architecture and agricultural landscapes from southern Missouri. The administrative sites are significant at a number of levels, including the Forest Service role in land use history in this region of Missouri, and the role of the federal government in rural land recovery and public and social works during the Great Depression through the Civilian Conservation Corps (CCC).

A number of different property types are threatened. These include a handful of historic farmsteads eligible as rural historic landscapes that came into federal ownership through the land acquisition program of the Mark Twain National Forest and a larger number of CCC-era historic administrative sites including ranger stations, fire towers, and associated buildings.

Discussions among consulting parties have determined the need for the development of two Programmatic Agreements.

One agreement would lay out a national process for consultation on buildings and facilities proposed for realignment. Realignment analysis will place priority:

- first on retaining with alternative or adaptive reuse;
- second on conveyance out of federal ownership; and
- third on disposal where a historic property will no longer be maintained to a standard that retains its integrity.

A second PA will lay out a process for evaluating the NR eligibility of all administrative sites at the Mark Twain National Forest and consideration of alternative uses of administrative sites proposed for realignment. The second PA will also agree to the mitigation of adverse effects to fire towers and administrative sites. These stipulations might include the following:

- standards for documentation of historic properties;
- the development and updating of historic contexts for fire towers, administrative sites, and recreation sites; and
- the retention and maintenance of certain properties, namely the Ava Ranger Station and the Sinkin Creek Fire Tower Complex.

The Advisory Council on Historic Preservation (ACHP) was notified by agency officials in September 2006 that the Mark Twain National Forest had completed an FMP process and wished to develop a Programmatic Agreement to resolve adverse effects to historic properties identified for decommissioning. The ACHP formally entered consultation on November 9, 2006. The ACHP provided written comments to the Mark Twain National Forest on November 28, 2006.

Other consulting parties include the Missouri State Historic Preservation Office and the National Trust for Historic Preservation (NTHP). There was a consultation meeting in January 2007.

The NTHP has been concerned with the process, progress, and commitment of the Mark Twain National Forest in completing its FMP process and consulting to develop a PA to coordinate Section 106 compliance



The Kofal Farm is a rural historic farmstead on the Mark Twain National Forest.

with the FMP process. The Mark Twain National Forest has applied for and received a matching grant from the NTHP to conduct an alternative use feasibility study of four historic properties at the forest.

This case is significant because it brings attention to the importance of early consultation and fully integrating input and assistance of agency historic preservation professionals into the facilities master planning process. This case also makes it clear that FMP establishes actionable recommendations that may affect historic properties and therefore National Forests should complete the Section 106 consultation process when engaging in the FMP process.

This case also brings to light the importance and expectation that agencies fully consider a range of alternatives including retention and adaptive reuse when proposing to realign the use of federal buildings and facilities that are listed on or eligible for the NR.

For more information:

www.nationaltrust.org/11most/07.html

NEW MEXICO

Project: Ongoing Case: Taos Regional Airport Expansion Plan

Agencies: Federal Aviation Administration, U.S. Department of Transportation

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Taos Regional Airport is a general aviation facility owned and managed by the town of Taos, New Mexico, and its airport authority. Expansion plans for the facility have been considered for more than 30 years, but the current Environmental Impact Statement (EIS) process was initiated by the Federal Aviation Administration (FAA) in 1992. The expansion plan proposes a new, longer, cross-wind runway to be constructed at the airport to better serve general aviation. Commercial air operations are not anticipated. The FAA recognized that the Taos Pueblo, a National Historic Landmark and World Heritage Site, may be affected by the proposed expansion plan and invited the Taos Pueblo, a federally recognized Indian tribe, and the National Park Service to be cooperating parties in the EIS and the Section 106 consultations.

The Advisory Council on Historic Preservation (ACHP) first became involved in the consultation regarding the expansion of the Taos, New Mexico, general aviation facility in 1994, when the Federal Aviation Administration (FAA), Taos Pueblo, and the National Park Service (NPS) could not agree on the Area of Potential Effects (APE) for the undertaking or the level of effort appropriate to identify the historic properties within the APE. The ACHP assisted the parties in negotiating a broad prospective APE and developing a scope of work for the ethnographic study of the APE. The ethnographic study was designed to provide sufficient background and information regarding historic properties to which the Pueblo attributes religious and cultural significance, while maintaining an appropriate level of confidentiality regarding specific property locations and associated activities. As a result of the ethnographic study, the FAA, in consultation with the Pueblo and NPS, determined that the entire Taos Pueblo was a National Register-eligible historic district for the purposes of the Section 106 process.



The Taos Pueblo is a National Historic Landmark and World Heritage Site located just north of the town of Taos, New Mexico. (Photo courtesy National Park Service)

In September 2006, the FAA provided the ACHP with its notice of adverse effect finding and documentation. The ACHP replied that comments of other consulting parties, particularly the Taos Pueblo, were necessary before determining whether ACHP participation was warranted under Appendix A Criteria for Involvement. In the interim, the FAA published its Draft Environmental Impact Statement (EIS) and initiated the formal 45-day comment period. The Section 106 documentation was included as Appendix Q to the draft EIS.

In January 2007, the Taos Pueblo and NPS provided the ACHP with copies of their detailed comments regarding the draft EIS and, specifically, the Section 106 finding of adverse effect in Appendix Q. The Pueblo and the NPS concurred with the FAA's finding of adverse effect but differed with the FAA's characterization of anticipated adverse effect. The FAA indicated the adverse effects of the new runway, with the anticipated aircraft types and flight tracks, would be relatively minor, being only somewhat visible and audible from points within the determined eligible historic district, and only minimally disruptive to any traditional activities or practices. The Pueblo, however, considered the potential adverse effects to be severe and very disruptive to traditional activities and practices. In addition, the Pueblo expressed concern that vibrations resulting from aircraft overflights using the new runway will harm fragile adobe structures. The Pueblo requested that FAA reconsider two alternatives, previously considered but dismissed in the alternatives analysis, which the Pueblo believed could minimize these adverse effects. The NPS provided comments

concurring with the Pueblo's concerns and underscoring the importance of the Taos Pueblo as a National Historic Landmark and World Heritage Site.

On January 30, 2007, the governor of Taos Pueblo met with ACHP staff to discuss the Pueblo's concerns. The governor requested the ACHP's participation in the consultation process. The ACHP responded in February 2007, notifying the FAA that it would participate. In addition to the Pueblo's concerns, the consultation meets Appendix A Criteria for Involvement because of anticipated adverse effects to the nationally and internationally significant Taos Pueblo, and because of interpretation issues. Specifically, this case highlights the challenges for federal agencies in conducting government-to-government relations with Indian tribes and Section 106 consultation with tribes and other consulting parties. This case also highlights the challenges of using the FAA's highly quantitative noise impact criteria (14 CFR Part 150) to inform the qualitative consideration of Section 106 noise effects on historic properties.

On March 19, 2007, ACHP staff met with the Taos mayor, town manager, airport manager, and FAA officials to discuss the consultation. The town is the applicant and a consulting party in the Section 106 process. Taos officials expressed concerns regarding the extremely lengthy (15 year) EIS process and the growing need for the proposed new runway. The mayor cited a recent situation in which wildfire-doubling planes were unable to take off with full water tanks because the existing runway is too short. As a result, the planes were less effective. Taos town officials also expressed confusion as to the nature of the Taos Pueblo's and NPS's concerns, because they had not been advised by the FAA of the content of the comment letters. During this meeting, the ACHP encouraged the FAA to ensure consultation documentation and discussions are shared with all consulting parties to the maximum extent.

The ACHP continues to work with the FAA to schedule a consultation meeting, including all the consulting parties, to discuss all issues and create a reasonable general timetable to obtain resolution. After 15 years, all parties seem interested in ensuring that resolution occurs as soon as possible. The ACHP's goal is to facilitate this resolution.

PENNSYLVANIA

Project: Closed Case: Security Installations at Independence National Historical Park, Philadelphia

Agencies: National Park Service

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A Memorandum of Agreement was executed in June 2007 for the National Park Service, through the Independence National Historical Park in Philadelphia, Pennsylvania, to implement security measures to better protect Independence Hall and the Liberty Bell, two national icons, from potential criminal or terrorist acts.

The proposed security measures at Independence National Historical Park entail two phases. The initial phase provides physical security measures such as a system of at-grade, moveable chains and 42-inch high bollards to separate already screened visitors from unscreened visitors on Independence Square. The second phase includes technological security measures, such as four 12- to-15-foot-high exterior poles with mounted security devices and underground connections to existing, in-ground power sources on Independence Square, as well as interior mounted devices within the non-public spaces of Independence, Congress, and Old City halls.

The National Park Service (NPS) will maximize the use of previously disturbed ground for the installation of the underground infrastructure and will conduct an archaeological survey prior to any ground disturbing activity in other areas. Should any historic properties be identified, the NPS will consult with the Pennsylvania State Historic Preservation Officer to develop a treatment plan. The NPS will designate a professional historical landscape architect to monitor all on-site construction and will develop and implement a context-sensitive design for the chains, bollards, and security poles. It will also utilize materials that are compatible with existing lighting fixtures on the Square. The NPS will develop and deliver, through wireless technology, an enhanced educational and interpretive program to the visiting public about the Square's history of safety and security.



Independence Hall is a focal point of Independence Square which will soon employ greater security measures to protect the national landmarks. (Photo courtesy National Park Service)

The NPS will reassess its security needs in cooperation with the consulting parties and seek, where appropriate, less intrusive methods. Prior to modifying any security measures, the NPS will consult with the consulting parties to determine whether an amendment to this Memorandum of Agreement (MOA) might be needed.

The Advisory Council on Historic Preservation became involved in the case on August 15, 2006. The NPS modified its original proposed undertaking in March 2007, leading to the MOA in June. Others involved in consultation were the city of Philadelphia and the Pennsylvania State Historic Preservation Office.

The Independence National Historical Park historic district was listed on the National Register of Historic Places in 1966 and includes such contributing buildings as Independence Hall (also a World Heritage Site), Congress Hall, Old City Hall, the Liberty Bell, the Commodore Barry Statue, the George Washington Statue, the Abraham Lincoln Plaque, and the American Philosophical Society Hall.

For more information:
www.nps.gov/inde

PENNSYLVANIA

Project: Closed Case: Transfer and Reuse of Philadelphia Main Post Office Complex

Agencies: U.S. Postal Service (lead), General Services Administration, Amtrak

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The United States Postal Service (USPS) transferred the majority of the Philadelphia Post Office Complex, particularly, the Terminal Annex Building and its USPS parking lot to the University of Pennsylvania, and the Main Post Office to the Brandywine Realty Trust, a real estate investment trust headquartered in Randor, Pennsylvania. The Main Post Office is listed on the National Register of Historic Places.

The greater part of U.S. Postal Service (USPS) operations in Philadelphia were formerly housed in the Main Post Office but moved in 2006 to a newly built Processing and Distribution Center near the Philadelphia International Airport. All that remains in the Main Post Office is a retail operation that will be moved to a newly renovated USPS vehicle maintenance facility building just south of the Main Post Office.

Circumstances surrounding the entire sale of the property made this case important. The USPS entered into negotiations to transfer the property to the University of Pennsylvania in 2004 but waited until December 2006 to initiate the Section 106 process. The Terminal Annex Building and Postal Service Parking Lot will be demolished and redeveloped for various commercial and residential purposes by the University of Pennsylvania as part of its 30-year campus development plan called "Penn Connects." The Brandywine Realty Trust will lease the Main Post Office to the General Services Administration (GSA) that will in turn lease the property to the Internal Revenue Service (IRS) to become a regional service facility.

A Programmatic Agreement (PA) was executed in June 2007 between the USPS, University of Pennsylvania, Brandywine Realty Trust, Advisory Council on Historic Preservation, and the Pennsylvania Historical and Museum Commission (Pennsylvania State Historic Preservation Office). Others involved in the formal consultations included Amtrak, Drexel University, the

Keating Development Company, and the Philadelphia Historical Commission.

The PA ensures that future rehabilitation of the Main Post Office, and future development on the Terminal Annex Building and Postal Service Parking Lot sites, will adhere to the Secretary's Standards and not adversely impact surrounding historic properties. Brandywine Realty Trust will complete a renovation of the Main Post Office in accordance with 36 CFR Part 67 in order to obtain historic preservation tax incentives. Over the next two years Brandywine Realty Trust will be working with the Pennsylvania Historical and Museum Commission on the development of a tenant handbook for the GSA establishing what type of alterations may or may not be undertaken at the Main Post Office. Also, an interpretive display on the history of the Main Post Office will be developed. The Design Review Committee and its Cultural Resources Sub-Committee of the University of Pennsylvania will develop specific design guidelines for all future development of the Terminal Annex Building and Parking Lot sites.

For more information:

Brandywine Realty Trust: www.brandywinerealty.com

Penn Connects: A Vision for the Future: www.evp.upenn.edu/news/UPenn_ExecSummary.pdf



The Main Post Office in Philadelphia is listed on the National Register of Historic Places. It will be redeveloped using historic preservation tax incentives.

VIRGINIA

Project: New Case: Replacement of the Tomb of the Unknowns Monument, Arlington National Cemetery, Virginia

Agencies: Arlington National Cemetery, Department of the Army, U.S. Department of Defense, Department of Veterans Affairs

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For decades, surface cracks in the carved finished marble of the Tomb of the Unknowns Monument in Arlington National Cemetery have been visible and progressively becoming more apparent. Cemetery officials believe these cracks make the existing stone unsuitable for an iconic solemn monument of national significance. They propose to replace the cracked memorial with a replica made of identical or similar new material. This poses a number of significant preservation issues.

At the close of World War I, the U.S. Congress approved a resolution to inter the remains of an unknown American soldier at Arlington National Cemetery, creating the Tomb of the Unknowns (Tomb). The plan called for a simple base upon which an appropriate monument would later be erected. Subsequently, the soldiers' remains were interred in a subterranean vault; the opening of the shaft was covered with a lid and capped by a large rectangular marble monument. It is this visible portion of the Tomb that is now proposed for replacement by Arlington National Cemetery.

Unknowns from subsequent conflicts have also been interred beneath the Tomb Plaza so that the Tomb's symbolic significance has grown to include and honor all who have perished in the nation's conflicts, and who are collectively represented by these unknown few fallen warriors.

The Tomb of the Unknowns Monument (Tomb Monument) consists of a capping monument headstone constructed in three pieces: base, die block (largest center piece), and capstone. It features bas-relief figural sculpture on the east elevation of the die block, and the west elevation bears the inscription "Here Rests In Honored Glory An American Soldier Known But To



Site inspectors view the condition of a crack in the Tomb of the Unknowns Monument. (Photo courtesy U.S. Army Corps of Engineers, Baltimore District)

God." From the outset, finding suitable unblemished stone was a challenge; the first finished base that arrived at Arlington was found to be imperfect. Another piece was obtained from a Marble, Colorado, quarry in 1931 allowing work to proceed. The Tomb was completed and opened to the public on April 9, 1932.

The first documented damage and repair to the Tomb Monument was recorded in 1933. In November 1963, a report on horizontal cracking of the die block was produced. This was the first recorded documentation of the horizontal cracks, but since they extended across all four elevations to a combined length of 34 feet, it is believed they had been in existence before 1963. Arlington National Cemetery reports the cracks have progressed and are expected to grow.

The Tomb of the Unknowns is situated on the East Plaza of the Memorial Amphitheater, and the Tomb and Plaza together comprise a historic landscape eligible for listing on the National Register of Historic Places (NR). The cemetery itself is also an eligible NR property. Although the Tomb is not listed on the NR, the cemetery considers it worthy of National Historic Landmark designation.

The Advisory Council on Historic Preservation (ACHP) became involved in consultations regarding replacement or repair of the Tomb Monument in December 2005. In addition to the ACHP and the cemetery, other federal

agencies involved include the National Capital Planning Commission, the Commission of Fine Arts, and the National Park Service (NPS). Other formal consulting parties at this point are the National Trust for Historic Preservation, Arlington County, Arlington Heritage Alliance, and the Association for the Preservation of Virginia Antiquities.

The only alternative acceptable to Arlington National Cemetery at this point is replacement of the historic gravestone by a contemporary replica of the original. But other consulting parties are promoting meticulous repair of the marble on the original structure.

The proposal to replace rather than repair the Tomb Monument is controversial in that it departs from the Secretary of the Interior's Standards for the Treatment of Historic Properties and from basic historic preservation principles. Appropriate and adequate mitigation for such an action is challenging to craft, in part because of differing philosophies among the consultation participants. Disposition of the original Tomb Monument is a critical issue that remains unresolved and yet is viewed by some participants as the most important issue in consultation.

The Arlington Heritage Alliance and the National Trust for Historic Preservation notified the cemetery via letters on August 6, 2006 and June 20, 2007, respectively, that replacement rather than repair of the original monument is not an appropriate preservation action. The National Trust's letter to the cemetery noted it "strongly supports retention, preservation, and appropriate repair of the existing base, die block, and capstone."

To establish a framework for future assessment of the situation, a Programmatic Agreement (PA) is being developed among the consulting parties. This approach will allow additional study to inform decisions as more information becomes available. The concept of a peer review committee is being discussed as a way to ensure consulting parties have the benefit of appropriate expertise as decisions are considered pursuant to the further development of the PA.

As discussed at a recent consultation meeting, the PA would ensure actions associated with the proposed



Cracks to the Tomb Monument and proposed replacement have caused concern in a number of groups due to the Tomb's historic status. (Photo courtesy U.S. Army Corps of Engineers, Baltimore District)

removal and replacement of the Tomb Monument would be synchronized to minimize adverse effects and interruptions in the public's access to the Tomb; that the project would be undertaken only if and when an exact replica is created and ready to be installed; that a clear direction for disposition and curation of the original Tomb Monument would be established prior to installation of the replica; that adequate mitigation for the adverse effect would be implemented; that all consulting parties and review agencies would be given an adequate and meaningful opportunity to review information upon which decisions would be made; and that appropriate expertise would be identified and applied for each action necessitating special expertise across a range of disciplines and technical knowledge.

VIRGINIA

Project: New Case: Base Realignment and Closure Act Actions, Fort Belvoir

Agencies: Department of the Army, U.S. Department of Defense

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As many as 22,000 additional civilian and military personnel are being considered for relocation to Fort Belvoir under the current Base Realignment and Closure Act (BRAC) actions, requiring major improvements in physical accommodations including transportation improvements and new construction. The current preferred alternative proposes BRAC development to occur on Fort Belvoir's Main Post and its satellite training area, the Engineer Proving Ground. Groups currently identified to be moved to Fort Belvoir are the Washington Headquarters Services, National Geospatial-Intelligence Agency, certain functions of the Walter Reed Army Medical Center, Missile Defense Agency, and other Army entities. This effort also includes the construction of a new hospital.

The area now known as Fort Belvoir was first used by the Army for training exercises in 1915. Two years later, on December 17, 1917, the installation was officially established as Camp A.A. Humphreys. In 1935, the installation was re-designated Fort Belvoir in recognition of the Belvoir mansion, once occupied by Lord Fairfax, a prominent member of the Virginia gentry, and its associated plantation that were on the site. Between 1917 and 1942 Fort Belvoir was expanded to its present size to meet the increased training demands of the two world wars.

This undertaking may affect a National Historic Landmark (NHL), as well as a large number of other important historic properties within the Woodlawn Historic District, many of which are listed on the National Register of Historic Places (NR) or are potentially eligible for listing.

Among known historic or potentially eligible sites are the following: Fort Belvoir Historic District



Barracks at Ft. Belvoir (Photo courtesy U.S. Army)

(eligible), Army family housing at Rossell Loop, Jadwin Loop, and Park Villages (contributes to eligible Fort Belvoir Historic District), Capehart-Wherry housing (eligible), Camp A.A. Humphreys Pump Station and Filter Building (eligible), U.S. Army Package Power Reactor Multiple Property (eligible), Thermo-Con House (eligible), Belvoir Mansion ruins and Fairfax grave site (NR), Fairfax Chapel (contributes to eligible Fort Belvoir Historic District), Mount Air (Fairfax County Mount Air Historic Overlay District), Pohick Church (NR), Woodlawn Plantation (NHL), Pope-Leighy House (NR), George Washington Grist Mill (contributes to eligible Woodlawn Historic District), Woodlawn Quaker Meetinghouse (eligible), Woodlawn Baptist Church (contributes to eligible district), and a number of other properties.

The list of consulting parties reflects the location and significance of the site. At the time of the *Case Digest's* publication, these included the following: Alexandria Society of Friends, U.S. Army Corps of Engineers, Catawba Indian Nation, local historian Martha Catlin, Fairfax County Architectural Review Board, Fairfax County Department of Transportation, Fairfax County History Commission, Fairfax County Park Authority, Fairfax County Planning and Zoning, George Washington Memorial Parkway, Gum Springs Historical Society, Gunston Hall Plantation, HDR, Mason Neck Citizens Association, Mount Vernon Board of Supervisors, Mount Vernon/George Washington Grist Mill, Mount Vernon Lee Chamber



World War I-era warehouses (Photo courtesy U.S. Army)

of Commerce, National Park Service, National Trust for Historic Preservation, Pohick Church, Tuscarora Nation of New York, United Keetoowah Band of Cherokee Indians in Oklahoma, Virginia Council on Indians, Virginia State Historic Preservation Office, Woodlawn Baptist Church, Woodlawn Plantation, and Woodlawn United Methodist Church.

The Advisory Council on Historic Preservation became involved on March 6, 2007, and the first formal Section 106 consultation meeting was May 2, 2007. Initial discussions on potential mitigation measures have occurred, and there is ongoing discussion of effect determinations.

As this Case Digest was being prepared for press, news reports indicated that the Army may significantly reduce the number of personnel reassigned to Fort Belvoir. Precise implications for heritage resources and final plans are unknown at this point.

WASHINGTON

Project: Ongoing Case: Abandonment of the Port Angeles Graving Dock Project and Site Remediation

Agencies: Federal Highway Administration, U.S. Department of Transportation

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After expenditure of approximately \$86 million in public funds, construction on the Port Angeles Graving Dock in Washington was halted in December 2004 to avoid further disturbance to a cemetery associated with the Tse-Whit-zen archaeological site. When work at the site ceased, the remains of at least 300 complete burials and another 1,000 isolated bones had been recovered. Decisions about the site remediation and ultimate disposition of the Port Angeles project site were recently documented in an amended Memorandum of Agreement for the project.

In December 2004, the Washington Department of Transportation (WSDOT) halted construction and determined to find a new location for the construction of pontoons for the East Half Hood Canal Bridge. This decision followed more than a year of construction and archaeological data recovery and the removal of some 300 complete human burials from the Tse-whit-zen site associated with the Lower Elwha Klallam Indian Tribe (LEKT).

Work had been carried out under the terms of a Memorandum of Agreement (MOA) executed by the Federal Highway Administration (FHWA), the U.S. Army Corps of Engineers (Corps), and others pursuant to Section 106 of the National Historic Preservation Act (NHPA) and the Advisory Council on Historic Preservation's (ACHP) regulations 36 CFR Part 800. The FHWA determined that the MOA executed in 2004 should be amended to address the shift in the undertaking from construction to abandonment of the project.

Consultation focused on site restoration, completing archaeological research, and disposition of the project site and the human burials removed from the site. Resolution of these issues was complicated due to the



Halted work on the Port Angeles Graving Dock showing part of the area impacted by construction activities

multiple jurisdictions involved. WSDOT is the current property owner, although the port of Port Angeles and the city of Port Angeles have jurisdiction over the property. FHWA and the Corps have legal responsibility for compliance with Section 106 but limited authority to dictate an outcome because they do not own the property.

To resolve a lawsuit filed in state court, WSDOT entered into settlement agreements with the LEKT and the city and port of Port Angeles. The three settlement agreements provide that:

- The LEKT will receive \$5.5 million for reburial of remains and materials and for site restoration.
- The parties will follow established rules for reporting and handling of remains and cultural items discovered in future construction projects in historic Klallam shoreline areas.
- The state will fund a city archaeologist position at Port Angeles City Hall.
- The state will remove the large concrete pad and sheet pilings that were installed at the site.
- The state will return 2,000 truckloads of soil currently stored at the Shotwell disposal site to Tse-whit-zen.
- The tribe will be responsible for reburial of all human remains at the site.
- WSDOT will transfer 11 acres of land to the tribe. Six additional acres will be transferred to the port and leased to the tribe and set aside for a “world-class” museum and interpretive center.

- The city and port authority may continue with planned maritime development in the area around Tse-whit-zen.

Additionally, the parties agreed that the analysis and reporting of archaeological data recovery efforts prescribed in the 2004 MOA need not be completed. Most of the substantive issues were resolved in negotiations not involving FHWA, the Corps, or the ACHP. To address the new circumstances surrounding the project, the ACHP advised FHWA that it should consider the need to amend the 2004 MOA to reflect measures agreed upon by the parties to the lawsuit. FHWA agreed and proposed to amend the 2004 MOA to incorporate commitments in the settlement agreements and the overall changes in the undertaking.

The ACHP entered into consultation on March 2, 2007, and the MOA amendment was executed on April 26, 2007.

Background:

The FHWA provided financial assistance, through the Federal-Aid Highway Program, to WSDOT for replacement of the East Half Hood Canal Bridge and renovation of the West Half Bridge, located in Kitsap and Jefferson counties, Washington. One component of construction was the needed development of a site for construction of large floating pontoons for the East Half Bridge.

FHWA initially determined that the construction of the Port Angeles Graving Dock would have no effect on historic properties. After discovering human bone fragments and cultural artifacts during construction, FHWA, WSDOT, the Corps, and the LEKT executed an MOA providing for data recovery excavations, curation of recovered archaeological materials, reburial of disturbed human remains, and monitoring construction. A separate settlement between the state and the LEKT gave the LEKT \$3.4 million for construction of a museum (in which materials from the site would eventually be stored) and the purchase of land for reburial.

FHWA’s original effects determination of “no historic properties affected” was revised to “adverse effect,” and



A view of the area discovered to contain the Tse-Whit-zen Klallam village and cemetery site

in the summer of 2004, up to 80 archaeologists and tribal members carried out construction monitoring, archaeological excavations, and the recovery of additional exposed human remains as construction of the graving dock proceeded.

The Tse-Whit-zen village site (45CA523), a historic Klallam village and cemetery, was known to be located somewhere in the vicinity of the proposed construction site. Archaeological testing failed to find evidence of the site but, once construction began, artifacts and human remains began to be unearthed in large numbers. The quality of preservation and the huge size of and number of artifacts from the Tse-Whit-zen site make it one of the most significant archaeological properties ever discovered in Washington. More than 300 complete human burials and 1,000 partial burials and isolated bones were recovered from the site after initial discovery in March 2004.

To professional archaeologists, the site is highly significant as the largest ancient Indian village ever unearthed in Washington, with aboriginal occupation spanning from 2,700 years ago to the early 19th century. To the LEKT, descendants of the site's occupants, the site is remembered as a coastal village and the final resting place of many Klallam ancestors.



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