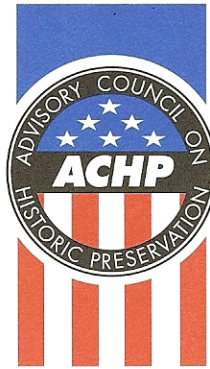


John L. Nau, III
Chairman

Susan S. Barnes
Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

November 3, 2008

The Honorable Dirk Kempthorne
Secretary of the Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Mr. Secretary:

In accordance with Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), I am writing to convey to you the final comments of the Advisory Council on Historic Preservation (ACHP) on the proposed authorization of the Mohave Valley (Tri-State) Shooting Range and land transfer near Boundary Cone Butte, Mohave County, Arizona.

Background

The Bureau of Land Management (BLM) has been consulting with the Arizona Game and Fish Department (AGFD), Fort Mojave Indian Tribe, Hualapai Indian Tribe, Arizona State Historic Preservation Officer (SHPO), ACHP, and interested organizations and individuals on the proposed authorization to construct a firearm shooting range on BLM land in Mohave County, Arizona. The shooting range would be constructed after BLM transfers ownership of the proposed property to AGFD. At issue are adverse visual and auditory effects the shooting range would have to Boundary Cone Butte, a property determined eligible for listing in the National Register of Historic Places, and the related larger valley landscape of religious and cultural significance to the Fort Mojave and Hualapai tribes. This undertaking has been under consideration for a number of years, with the BLM publishing a Notice of Intent to amend the Kingman Field Office Resource Management Plan (RMP) in 1999 and inviting the ACHP and Arizona SHPO to participate in the Section 106 consultation regarding this undertaking in 2006.

The AGFD's original proposal was to utilize the Boundary Cone Road location for construction of the shooting range, a site to which the Fort Mojave and Hualapai tribes objected. BLM considered 10 parcels on its lands as potential alternative locations for the shooting range, but did not analyze them because they did not meet AGFD's criteria. As a result of a BLM-sponsored Alternative Dispute Resolution (ADR) process in 2004-2005, seven additional alternative locations were identified, but only one, the Willow Road location, was subject to further analysis by BLM. The tribes also objected to this location. The Willow Road location required an easement across tribal land, and contained numerous unevaluated archaeological sites, and BLM eliminated that alternative as well. Among the alternatives discussed, but not analyzed, was a state-owned parcel that met all the criteria, including lesser adverse effects, fewer environmental concerns, and proximity to the shooting community, because AGFD would be required to pay the Arizona State Land Office for the property.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 809 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

BLM subsequently determined that further consultation would not be productive, and in accordance with 36 CFR Section 800.7(a) terminated consultation and requested that the ACHP provide formal comment. In developing our comments, on October 21, 2008, I conducted a series of meetings with each of the stakeholders in this process, which were very helpful in enabling me to better understand the issues and why agreement could not be achieved. As part of the ACHP's deliberative process, the ACHP also solicited public input through *Federal Register* notice and invitations to known interested parties.

Findings

Boundary Cone Butte and its environmental setting is of premier religious and cultural significance to Indian tribes. Boundary Cone Butte, recognized as eligible for inclusion in the National Register of Historic Places, is a property of traditional religious and cultural significance to the Fort Mojave Indian Tribe and the Hualapai Indian Tribe. There is a basic incompatibility between the land uses of a shooting range and an area where traditional cultural use would be disrupted by the audible intrusions of repeated gunfire. The construction of a shooting range in this location would clearly result in disruptions to traditional cultural use of the area and diminish elements of the butte's integrity as a historic resource, such as the visual setting and feeling of the area. According to the tribes, "[m]aintaining the sanctity of this property is crucial to the ability of tribal religious practitioners to carry on traditional practices and to pass these traditions along to younger generations."¹ The tribes have further argued that "[t]he noise caused by a shooting range would severely disrupt the sanctity of Boundary Cone as well as visually alter the landscape and burden the exercise of religious practices."² This linkage between the recognized significance of the butte under the National Register criteria and its premier role in the traditional practices and values of the tribes is of critical importance in meeting the "take into account" standard established for federal agencies in Section 106 of the NHPA. We question whether BLM in its review of this matter has met this standard.

Opportunities were missed for alternative dispute resolution to benefit Section 106 consultation. BLM should be commended for its use of ADR as a way of brokering differences on this problematic issue. It is regrettable that it was not more successful. We further acknowledge BLM's long consultation record under Section 106. It is troubling, however, that BLM did not recognize the obvious need to connect consultation under Section 106 with its ADR effort, especially since the two could have been mutually beneficial. It was not until a year following the ADR effort that BLM initiated consultation with the Arizona SHPO and the ACHP under Section 106. The nationwide Programmatic Agreement that BLM operates under to meet its Section 106 responsibilities requires that BLM shall request the ACHP's review of "highly controversial undertakings." Surely having to invoke ADR would constitute a clear indication that an undertaking had met this test, and ACHP involvement should have been sought.

Shortcomings in BLM's study of Boundary Cone Butte compromised informed decision-making. Because of religious, cultural, and confidentiality considerations, the tribes were reticent about providing sensitive information regarding the identification of historic properties within the area of potential effects for the Boundary Cone Road alternative. While this posed challenges for BLM in its identification effort, this could have been overcome had BLM undertaken an ethnographic study as the Fort Mojave tribe requested in 2003 and the ACHP additionally recommended in late 2006. Such a study, undertaken by a trained ethnographer and carried out in a sensitive manner that provides for any confidentiality concerns that the tribes may have, would

¹ Letters from Fort Mojave Indian Tribe and Hualapai Indian Tribe to ACHP, October 23, 2008

² Ibid.

have allowed BLM to move forward in the Section 106 process in consultation with the tribes to apply the criteria of adverse effect to historic properties with greater authority and confidence. This presented another flaw in how BLM chose to meet the Section 106 requirements.

Consideration of alternatives is inadequate. We do not believe that BLM has adequately explored other locations and uses, despite the time spent on consultation. Viable alternatives that could have avoided impacts to lands of religious and cultural importance to tribes were dismissed based primarily on cost considerations, such as the need to purchase state or private land, current lack of electricity or road access, and need for additional archaeological inventory. While we understand the need for cost-effective development, this should not come unreasonably at the expense of historic properties.

Recommendations

In view of the above findings and in consideration of the facts in this matter as we understand them, the ACHP offers the following recommendations:

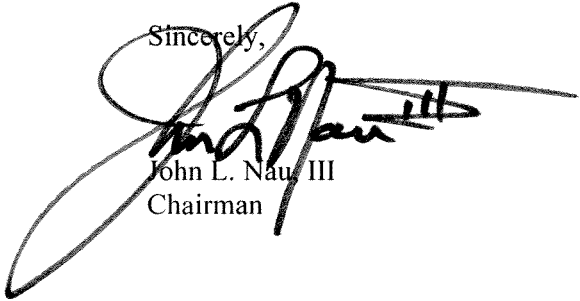
- I. BLM should not transfer to the AGFD land for purpose of construction and operation of the Tri-State Shooting Range and associated buffer areas as long as the proposed site for this development is the Boundary Cone Road site. It should assess other possible alternatives outside of the Mohave Valley that have potential to meet the goals of the shooting community and AGFD without impacting the historic property. Only after these alternatives have been exhausted should BLM reassess other possible alternatives that were identified through the ADR process that have potential to meet the AGFD goals, while not doing so at the expense of historic properties. One such alternative might be a partnership that would enable the BLM to transfer land to the state land agency in exchange for making available to the AGFD, without cost, the state lands that have been identified as the most promising site for the shooting range. Another alternative might be the consideration of Site number 1 previously considered under ADR and presently identified by the Fort Mojave and Hualapai tribes as an alternative that might warrant further consideration.

- II. To address the on-going concerns regarding the tribal significance attached to this area, the ACHP recommends that BLM explore with the tribes and other concerned parties its options to begin managing BLM lands within the entire valley in a manner that recognizes the significance of this important historic resource and affords it the kind of consideration it is due as such. These options include considering designation of the area as an Area of Critical Environmental Concern (ACEC) or a National Landscape Conservation Area (NLCS), which may afford additional protection. BLM has indicated its willingness to provide funds for landscape level studies to generate information that will allow future Resource Management Plans (RMP) to “avoid impacts to significant cultural resources, including areas of traditional cultural importance to Indian tribes.”³ BLM should prioritize funding to institute this level of planning for the Mohave Valley to begin to address the landscape that is of clear significance to the tribes. Now that BLM has recognized Boundary Cone Butte as a historic property, it should move forward to restrict uncontrolled shooting on adjacent BLM lands to protect the integrity of this site of traditional religious and cultural importance to the tribes and further diminish audible intrusions into its use by practitioners.

³ BLM's Progress Report on Section 3 of E.O. 13287, September 2008, p. 11.

In accordance with 36 CFR Section 800.7(c)(4), you must take into account these comments of the ACHP, and respond to them, prior to reaching a decision on the proposed shooting range. In accordance with Section 110(1) of the NHPA and the Section 106 implementing regulations, this responsibility cannot be delegated. We request a response to these comments by December 12, 2008, so that sufficient time is available to identify alternative locations that would allow for better preservation outcomes for historic properties.

Sincerely,



John L. Nau III
Chairman