



Preserving America's Heritage

CASE DIGEST: SECTION 106 IN ACTION



ADVISORY COUNCIL ON HISTORIC PRESERVATION

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An independent federal agency, the Advisory Council on Historic Preservation (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 Worthington Farm is one of the historic properties likely to suffer adverse effects from a highway widening project that impacts the Monocacy Battlefield in Maryland. (Photo courtesy Maryland State Highway Administration)

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 measures that the lead federal agency must take to ensure the protection of a property's historic values.

Each year thousands of federal undertakings go through 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.

CALIFORNIA

Project: Closed Case: Hay Ranch Water Extraction and Delivery System Programmatic Agreement

Agencies: Bureau of Land Management, Department of the Interior

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Proposed construction of a pipeline to deliver water for injection into an existing geothermal aquifer was controversial because of tribal concerns about the potential to adversely affect the Coso Hot Springs, which is listed in the National Register of Historic Places for its religious and cultural values.

The Bureau of Land Management (BLM) proposed to issue a right-of-way (ROW) across federal lands to Coso Operating Company for the construction and operation of a water delivery system (nine miles of underground water pipeline, storage tanks, and pumping system) between two existing wells and the existing Coso geothermal power generation plant. Upon completion, water pumped from the two wells would flow through the pipeline and enter the existing power plant piping system through an existing injection well. The intended use of the water is to replenish water lost through evaporation at the Coso geothermal power generation plant, which has been in operation since the 1980s and is located on lands managed by the Naval Air Weapons Center China Lake (Navy). The pipeline will cross lands managed by the BLM, the Navy, and private landowners.

During the course of Section 106 review, BLM consulted with the Big Pine Paiute Tribe of the Owens Valley, the Bishop Paiute Tribe, the Fort Independence Paiute Tribe, the Lone Pine Paiute-Shoshone Tribe, the Timbisha Shoshone Tribe, the Kern Valley Indian Community, and the Tubatulabals of Kern Valley. BLM also consulted with the county of Inyo, California; the Navy; the California State Historic Preservation Officer (SHPO); and the Advisory Council on Historic Preservation (ACHP).

BLM consulted informally with the ACHP before



The Coso Hot Springs pools are located in what is otherwise an arid landscape. (Photo courtesy Ken Wilson, California State Office, Bureau of Land Management)

formally inviting the ACHP to participate in Section 106 consultation in December 2007. The ACHP participation was warranted because of concerns raised by tribes about potential effects to the Coso Hot Springs, which is listed in the National Register of Historic Places for its traditional cultural and religious significance.

The undertaking posed a number of interesting challenges:

- There were disagreements among the BLM, SHPO, and the tribes regarding BLM's definition of the area of potential effects (APE) for the undertaking, including whether it was reasonable to include the Coso Hot Springs, which is nearly two miles away, within the APE.
- Tribes raised concerns about the effectiveness of tribal consultation.
- Given the nature of the undertaking and the definition of the APE, BLM was not able to make a definitive finding of effects to historic properties.
- BLM expressed concerns about the precedent of having to evaluate effects of the terminal use of a commodity (such as water, electricity, or petroleum products) in applications for an ROW for commodity transportation across public lands.
- The Coso Hot Springs posed jurisdictional issues because the springs, as well as the existing geothermal power generation plant, are located on lands managed by the Navy. The Coso Hot Springs are already managed pursuant to agreements between the Navy and the tribes.

Initially, BLM had concluded that the Coso Hot

Springs site was outside the APE. BLM held that the springs were located almost two miles from the pipeline corridor, and that a series of hydrological studies and analyses provided no clear connection between the conditions of the Coso Hot Springs and the geothermal reservoir that supplied the electrical generation plant. BLM also argued that injection of new water into the geothermal reservoir would only replace water being lost through evaporation and that injection of new water from other sources was a pre-existing activity at the plant. In any case, BLM was concerned that evaluating the effects of the terminal use of a commodity after it had left the pipeline on BLM land might be outside the scope of agency Section 106 responsibilities. The tribal position was that the existing geothermal power generation plant had affected geothermal activity at the Coso Hot Springs and that injection of new water into the geothermal reservoir might adversely affect the temperature or elevation of water at the springs.

After additional discussions with the consulting parties and at the urging of the ACHP and the tribes, the BLM redefined the APE to include the Coso Hot Springs site. Based on recent hydrological studies as well as earlier studies of the Coso geothermal field, BLM concluded the studies did not identify a clear connection nor completely rule out a connection between geothermal energy production and changes in geothermal activity at Coso Hot Springs.

Prior to entering consultation formally, the ACHP had advised that, because the BLM could not render a clear finding regarding the potential effects of injecting additional water into the geothermal reservoir, the agency should develop a Programmatic Agreement (PA). BLM agreed, taking into consideration that the Navy has ultimate responsibility for management and use of Coso Hot Springs and already administers a Programmatic Memorandum of Agreement, which provides for monitoring, identification of potential effects, and access to the springs for traditional practitioners. BLM consulted with the Navy, SHPO, the ACHP, traditional practitioners who utilize Coso Hot Springs, the tribes, and other interested parties to develop a PA.

A PA was executed among the consulting parties in July 2008. The stipulations provide for avoidance of all



Coso Hot Springs, California, is at the heart of concerns centering on geothermal development and its potential impact on a traditional cultural site. (Photo courtesy Ken Wilson, California State Office, Bureau of Land Management)

archaeological properties recorded during inventory of the pipeline corridor, as well as inclusion of tribal monitors during project implementation. Specific to the Coso Hot Springs, the PA afforded a formal role for BLM in coordinating with the Navy on the status of geothermal monitoring and distribution of information and reports to tribes. In addition, the PA provided for addressing changes in use patterns by traditional practitioners resulting from implementation of the undertaking, including coordinating with the Navy and other consulting parties to develop a means to address effects resulting from this undertaking, whether they are considered adverse or beneficial, in accordance with the Navy's existing management agreements.

While tribal consultation had a difficult start, at the end of the process the Big Pine Paiute Tribe of the Owens Valley thanked BLM staff for their "commendable, proactive government-to-government consultation." The tribes continue to have concerns about geothermal power production and potential impacts to the Coso Hot Springs and are addressing those issues directly with the Navy.

HAWAII

Project: New Case: Disposal of *Falls of Clyde* Historic Ship, Honolulu

Agencies: Environmental Protection Agency

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The only surviving steel-hulled, sail-powered oil tanker, the designated National Historic Landmark *Falls of Clyde* became the subject of a Section 106 review when a permit to dispose of the deteriorating ship at sea was requested from the Environmental Protection Agency.

The Bishop Museum Maritime Center in Honolulu, Hawaii, proposed to sink the historic vessel *Falls of Clyde*, a steel-hulled, four-masted sailing vessel constructed in 1878. The *Falls of Clyde* was listed in the National Register of Historic Places in 1973 and designated as a National Historic Landmark (NHL) in 1989. This vessel possesses historic significance, in part, as the only surviving steel-hulled, sail-driven oil tanker.

The museum is no longer able to maintain the vessel, which is in significant disrepair. The museum feared the vessel would capsize and sink at its mooring during the current hurricane season, possibly causing damage to the dock and nearby historic vessels and structures. The costs for towing the vessel to dry dock would exceed \$90,000. The estimated cost for preliminary stabilization of the vessel is in excess of \$9 million. Full rehabilitation of the vessel could cost as much as \$40 million. Maintenance after rehabilitation would cost \$700,000 annually.

In February 2008 the museum began efforts to find a new owner and caretaker for the ship, sending out more than 500 letters to stakeholders across the United States, issuing press releases to media organizations around the world, and sending more than 700 letters to maritime centers and organizations around the world. However, no party with the financial capability to assume ownership of the vessel came forward through most of 2008. As a result, the museum was considering disposal of the vessel by sinking at sea, which would



The *Falls of Clyde* is the last steel-hulled, sail-powered petroleum tanker still extant, and its continued existence is in peril. (Photo courtesy Bishop Museum Maritime Center)

require an Environmental Protection Agency (EPA) Ocean Disposal General Permit. The disposal also would require a United States Coast Guard (USCG) review of the tow plan necessary for towing the *Falls of Clyde* from its berth to the disposal site.

The Section 106 process was initiated in July 2008. Consulting parties include the museum, the Hawaii State Historic Preservation Officer, Historic Hawai'i Foundation, and the National Park Service (NPS). The NPS was invited into the consultation pursuant to the requirements of Section 110(f) of the National Historic Preservation Act and 36 CFR 800.10 of the Section 106 implementing regulations that require a federal agency minimize harm to NHLs that might be affected by an undertaking. The Advisory Council on Historic Preservation (ACHP) entered the consultation in September 2008. The USCG initially participated in the Section 106 consultation but subsequently determined that its review of the tow plan was not subject to Section 106.

In the course of developing a Memorandum of Agreement (MOA) to resolve the adverse effects of the disposal, consulting parties were considering mitigation for the loss of the vessel that included appropriate recordation of the vessel, recovery of significant pieces from the ship, and development of a report documenting the importance of the ship, and lessons learned in the attempt to find an entity to take possession of the ship and rehabilitate it.

However, as the Section 106 process proceeded, the

museum continued discussions with stakeholders proposing to take possession of the vessel. In late August/early September 2008, a new stakeholder group, the Friends of *Falls of Clyde*, came forward. Following several weeks of negotiations, the museum's board of directors approved the transfer of ownership of the *Falls of Clyde* to the Friends of *Falls of Clyde* on September 29, 2008. The vessel will be docked at its current berth site until mid-November, at which time the *Falls of Clyde* will be moved to a local dry dock. The museum is hopeful this will be the beginning of stabilization and ultimately restoration of the vessel by its new caretakers.

As of *Case Digest's* publication, the Section 106 process is on hold. Although the museum no longer appears to require an Ocean Disposal Permit, the parties have not yet formally signed the transfer documents. In addition, the transfer documents provide that in the unlikely event the Friends of *Falls of Clyde* is unable to implement its plan to move the ship within 90 days, the museum retains the right to move and dispose of the ship. Thus, the museum has not yet withdrawn its application for the EPA permit.

For more information:

[www.bruzelius.info/Nautica/Ships/Fourmast_ships/Falls_of_Clyde\(1878\).html](http://www.bruzelius.info/Nautica/Ships/Fourmast_ships/Falls_of_Clyde(1878).html)

HAWAII

Project: New Case: Placement of Solar Telescope on Mount Haleakala, Maui

Agencies: National Science Foundation (lead); National Park Service

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The summit of Haleakala, a mountain on the island of Maui, Hawaii, that is of religious and cultural importance to Native Hawaiian organizations, has been identified through a National Science Foundation-funded study as the optimum site for the Advanced Technology Solar Telescope project. If the grant applicant, the National Solar Observatory, builds the project, it would be the world's largest solar telescope and would provide astronomical data for a period of approximately 40 years.

Largely because no other site is under further consideration for construction of the Advanced Technology Solar Telescope (ATST) other than the Haleakala summit, a portion of which is already occupied by the University of Hawaii Institute for Astronomy's 18.166-acre High Altitude Observatories, Native Hawaiian organizations and many stakeholders have objected to the ATST project.

Many participants in the Section 106 process believe the effects of construction and operation of the facility would be so detrimental to the peak's significant qualities, especially for its association with Native Hawaiian cultural and religious practices, that the National Science Foundation (NSF) should not fund the proposal. Despite having funded \$20 million in grants to date for planning and design of the project, the NSF has not yet made a final decision and is taking comments from stakeholders on the specific ways in which the mountain could be harmed by the project, whether the project should be funded, and how to mitigate any harm to the mountain's special character if the project proceeds.

The proposed site of the project at the summit of Haleakala is primarily surrounded by national park land. Therefore, in order to construct and operate the



The main park visitor area at the summit, showing the park's visitor facility at Pu'u'ula'ula on the left and Haleakala Observatories on the right. (Photo courtesy Haleakala National Park)

facility, access to the facility through Haleakala National Park would be required. The magnitude of the project in comparison to existing facilities and the minimal nature of human access currently required presents challenges that are now only beginning to be addressed. The National Park Service (NPS) requires that a Special Use Permit, designed to govern how access is defined, be obtained for the use of the park road in connection with the ATST project.

The park and other consulting parties have expressed concern for potential damage to park natural and cultural resources that could result from construction activities. NSF proposes to provide for repair or replacement of affected non-historic facilities, for example, the entrance station, which may need to be demolished to accommodate access to the telescope facility. The two federal agencies are evaluating alternatives to avoid, minimize, or mitigate adverse effects through Section 106 consultation. A historic park road from the 1930s era of the Civilian Conservation Corps and early NPS rustic development are at risk, including character-defining features of the road system such as bridges and culverts. Before issuing a permit, the NPS must meet Section 106 responsibilities, in coordination with NSF and others, and ensure that actions permitted would meet policies governing park use and protection. NPS officials from the park and the Pacific West Regional Office are in the process of discussing with NSF how the two agencies may be able to work in partnership so that, should the project be funded, they may fulfill their joint responsibility for meeting Section 106

requirements.

In late August 2008, the Advisory Council on Historic Preservation joined NSF, NPS, the Hawaii State Historic Preservation Officer, Native Hawaiian organizations, and other consulting parties in Section 106 consultation meetings to discuss how to address effects to Haleakala. Future consultation is expected to also encompass other National Register properties, such as the park road system, that would be governed by an NPS permit. Stakeholders (including NPS) have conveyed their strong belief that the mountain as a whole, much of which is within national park boundaries, and not just the summit, is of cultural significance and should be preserved unimpaired.

In light of the magnitude of the adverse effects that cannot be avoided if the project is built at the summit, the issue of whether the ATST project should be funded is expected to continue to be the central question facing NSF.

KENTUCKY

Project: Ongoing Case: Interstate 65 to U.S. Highway 31 West Connector Highway Project
Agencies: Federal Highway Administration, U.S. Department of Transportation
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Local community advocates, historic preservation organizations, and caving advocates continue to oppose a large industrial development known as the Kentucky Transpark since construction began in 2003. Concerns center around the impact of the development on the rural landscape, the potential for disturbing archaeological sites and human burials located in underground caves, and whether the Kentucky Division of the Federal Highway Administration has adequately addressed the indirect and cumulative effects of this development on historic properties.

On July 11, 2006, the Advisory Council on Historic Preservation (ACHP) notified the Federal Highway Administration (FHWA) that it would become involved in consultation on the Interstate 65 to U.S. Highway 31 West Connector Highway Project due to its concern over potential adverse effects to properties eligible for listing in the National Register of Historic Places. In reaching this decision, the ACHP determined that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of the Section 106 regulations was met due to the controversial nature of the undertaking and the potential for procedural problems in completing Section 106 of the National Historic Preservation Act.

The undertaking is the construction of a new four-lane highway connector between Interstate 65 (I-65) and U.S. Highway 31 West in south-central Kentucky. The new highway will pass directly between Phase I and Phase II of the Kentucky Transpark (Transpark), a large and controversial industrial development currently under construction five miles northeast of Bowling Green. The new highway will also provide access to the Transpark. Construction began on Phase I of the Transpark several years ago without federal oversight. The FHWA became involved when Congress earmarked funding for construction of the connector road.



The Andrew James Wardlaw III House is one of three historic properties found in Phase II of the Kentucky Transpark. Surrounding lands are proposed for industrial development, but this historic home will be left in place. (Photo courtesy Qk4)

The proposed new highway project is located in Warren County in an area experiencing rapid growth. The FHWA considers that only Phase II of the Transpark project is within the Area of Potential Effects (APE) for this highway project because construction has already proceeded on development of Phase I. Phase I will continue to be developed with or without the connector road. The development of Phase II of the Transpark has been determined to be an indirect effect of the highway project.

Consulting parties in the Section 106 process include the Sierra Club, the city of Oakland, the National Trust for Historic Preservation, the Kentucky Transportation Cabinet, Karst Environmental Education and Protection Inc., the Intermodal Transportation Authority (ITA), the Kentucky State Historic Preservation Office, and the ACHP.

FHWA, in consultation with these parties, is developing a Memorandum of Agreement to address indirect effects on two historic buildings and one historic cemetery located in the area proposed for Phase II of the Transpark. FHWA and the ITA have also committed to conducting additional archaeological investigations to determine if underground archaeological sites that are scattered throughout the karst topography of the region might be affected by construction.

This is an improvement over FHWA's initial proposal, but it will not likely fully satisfy all of the consulting parties.

MARYLAND

Project: New Case: Monocacy Battlefield NHL Highway Impacts

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

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The Federal Highway Administration is studying improvements to Interstate 270 and U.S. Highway 15 in Maryland, potentially including rail and bus transit systems as well as additional travel lanes. The project could impact the Monocacy Civil War Battlefield National Historic Landmark, site of an important battle involving the most significant Confederate military advance aimed at the nation's capital, as well as other historic farms, structures, and landscapes in the area. Improving traffic conditions in the growing metropolitan area is important, and so is the need to avoid or minimize adverse effects to sensitive historic properties.

The Federal Highway Administration (FHWA) is conducting a corridor study on improvements to Interstate 270 (I-270) and U.S. 15 in Frederick and Montgomery counties, exploring options to ease congestion. In addition to structural highway improvements almost certain to include new additional traffic lanes, transit options such as an express bus lane or light rail transit are being considered as part of the undertaking.

This project is certain to impact the Monocacy Battlefield National Historic Landmark (NHL), raising serious preservation concerns. The nature of the challenge is underlined by the significance attached to the historic property. The American Battlefield Protection Program of the National Park Service (NPS) has designated Monocacy a Priority 1 battlefield. This designation identifies sites with critical needs for protective actions. The private, non-profit Civil War Preservation Trust (CWPT) has named this site one of its 10 most endangered.

At the same time, the need to relieve vehicular congestion in this part of Maryland near the nation's capital is high.



View from Thomas Farm looking west at Worthington farmhouse
(Photo courtesy Maryland State Highway Administration)

The Maryland State Highway Administration (SHA) and Maryland Transit Administration (MTA) are working together to find a multi-modal solution, but expansion of the existing 1-270 corridor would affect the Monocacy Battlefield NHL.

In addition to the battlefield, the following historic properties could be affected by the undertaking: the Atomic Energy Commission building, England/Crown Farm, Spring Bank, Belward Farm, Schifferstadt, Rose Hill Manor, Bireley Roelkey farm, Harmony Grove Union Church, and Woman House.

The Advisory Council on Historic Preservation notified the FHWA on July 29, 2008, that it would participate in consultation because of the many important historic properties involved. Other consulting parties are the FHWA, SHA, MTA, NPS, CWPT, Maryland State Historic Preservation Office, Frederick County Historic Preservation Commission, and Frederick County Landmarks Foundation.

SHA is preparing an Alternatives Analysis/Environmental Assessment/Section 4 (f) Evaluation which will go out for public review as the parties continue to work toward resolving adverse effects.

NEBRASKA

Project: Ongoing Case: Nebraska Federal Office Building, Omaha

Agencies: General Services Administration

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The Nebraska Federal Office Building was determined to be surplus to federal government needs in November 2005 by the General Services Administration. A Memorandum of Agreement is being developed to establish covenants for the long-term preservation of the building and to require listing it in the National Register of Historic Places.

On February 27, 1934, the Nebraska Federal Office Building (FOB) in Omaha was completed and formally dedicated. Speakers congratulated the architects and builders for the speed of construction and remarked on the beauty of the Art Deco building.

The building is significant in the areas of architecture and government. The design of the building reflects a clear transition from the past and represents the ideals of the public works projects initiated under the Hoover and Roosevelt administrations. The design, created by the prominent Omaha architectural firm of Kimball, Steele & Sandham and George B. Prinz is distinctly Moderne, with many Art Deco references. Locally, the building has exemplified the federal governmental presence in Omaha for more than 60 years.

After the General Services Administration (GSA) determined that the Nebraska FOB was surplus to the needs of the federal government in November 2005, it determined that the public sale may have an adverse effect upon the property which is eligible for listing in the National Register of Historic Places. The Nebraska State Historic Preservation Office (SHPO) requested that the GSA seek to provide for the long-term preservation, public accessibility, and stewardship of the Nebraska FOB by coordinating its designation as a local landmark under Title 4 of the Omaha Municipal Code.



The Nebraska Federal Office Building became surplus to federal government needs in November 2005, and covenants are being established for the long-term preservation of the building.

GSA was initially reticent on pursuing local designation since it felt eligibility for the National Register was sufficient. The SHPO indicated that official listing in the National Register was necessary in order to proceed with the local designation, which in turn was necessary for the SHPO to administer the covenants. National Register listing would also enable subsequent tax credits that would assist any potential purchaser in making the property viable for rehabilitation.

An MOA is now being created that will establish covenants for the long-term preservation of the building as well as require GSA to apply for the formal National Register listing.

For more information:

http://w3.gsa.gov/web/p/interaia_save.nsf/1fd3e688294c3a74852563d3004975f4/aa1adb89b88e67c3852565d90053a18e?OpenDocument#TOP

NEVADA, CALIFORNIA

Project: New Case: Programmatic Agreement for Regional Section 106 Streamlining

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

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The Pacific Southwest Region of the Forest Service is operating under two similar, but sometimes competing, regional Programmatic Agreements. The FS seeks to develop a new PA that would streamline the Section 106 process, making historic preservation more efficient and effective through the professionalism and expertise of the FS's historic preservation program.

The Pacific Southwest Region of the Forest Service (FS) covers 20 million acres of federal lands on 18 national forests throughout California and a relatively small part of Nevada. A proposed new Programmatic Agreement (PA) will establish unique operating procedures for the FS in this region when carrying out their Section 106 compliance responsibilities.

Specifically, the PA will identify a number of undertakings that are exempt from Section 106 review due to their limited potential to affect historic properties. The PA also establishes a series of pre-approved standard protection measures which, if applied by the FS, will allow an individual national forest to move forward with a no adverse effect finding without additional consultation with the State Historic Preservation Officer (SHPO). The PA clarifies how the FS will consult with SHPOs, tribes, and the public, and when and how required reports, determinations, and findings will be forwarded to and reviewed by the SHPOs and other appropriate consulting parties such as Indian tribes.

The PA sets out a generalized process for making consensus determinations of eligibility with the SHPO as well as providing specific protocols for determining the eligibility of historic trash deposits and isolated historic mining prospecting pits.

Under the PA, each forest in the region would operate



Forest Service Pacific Southwest and Intermountain regions

within the terms of the PA independently. Based on the results of annual performance reviews, a forest may be placed on probationary status or suspended from participation under the terms of the PA if proper procedures are not followed.

Currently, the Pacific Southwest Region operates under two similar, but sometimes competing, regional PAs. Estimates prepared by the FS regional office for its annual PA report indicate that the increased efficiency and reduced Section 106 compliance costs afforded by the agreements saved the region as much as \$24 million in FY 2007. By streamlining the process for determining eligibility, assessing and resolving effects, and reporting and consulting with SHPOs and others, and providing substantial cost savings, the FS will be able to stretch limited Heritage Program funding further for important, non-compliance Heritage Program stewardship activities in accordance with Section 110 and the Preserve America initiative.

The development of a new and improved, single Regional PA will provide national forests in the region with an agreement and operating procedure that is up-to-date and consistent with changes that have occurred in the Section 106 regulations. It will also better align with the recently revised manual for the Forest Service Heritage Program.

The Advisory Council on Historic Preservation became formally involved in consultation in September 2008. For more information:

www.fs.fed.us/r5

VIRGINIA

Project: Closed Case: Programmatic Agreement Resulting from Realignment Actions at Fort Lee and Fort A.P. Hill

Agencies: Army, Department of Defense (lead); National Park Service, Department of the Interior

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As a result of a realignment from the Defense Base Closure and Realignment Act, the Army proposes to develop military combat training areas at Fort A. P. Hill. A Programmatic Agreement (PA) executed in August 2008 provides for the treatment of historic properties on and contiguous to Fort A.P. Hill. This PA includes the use of an off-site conservation easement as creative mitigation for adverse effects to historic properties.

As a result of the Base Closure and Realignment Act (BRAC), the Army is proposing to realign Fort Lee. Fort Lee will be receiving additional units but will have insufficient land and space available to conduct Warrior Training involving heavy weapons and explosives for them. Accordingly, appropriate Warrior Training facilities for units realigning to Fort Lee will be developed at nearby Fort A.P. Hill.

The training at Fort A.P. Hill would involve transporting students and noncommissioned officers of the Noncommissioned Officers Academy from Fort Lee to Fort A.P. Hill for four-day training sessions. The area of potential effects (APE) for this undertaking includes eight Forward Operating Base locations and one Explosive Ordnance Disposal location. This undertaking will have direct adverse effects on archaeological resources at Fort A.P. Hill.

In a creative approach to resolve the adverse effects of this undertaking, the Army will acquire a conservation easement for approximately 500 acres outside the installation on the Camden Farm, a National Historic Landmark. The easement will be offered to the Virginia Outdoors Foundation and the Virginia Board of Historic Resources. A 55-acre



Installation Management Command (IMCOM) soldiers patrol during the IMCOM competition at Fort A.P. Hill, Virginia. (Army photo by Tim Hipps, Family and MWR Command)

“no-development” core will be included in the terms of the easement. Certain limited development will be permitted through a set process on the remaining acres.

Other terms of the easement include that there be an initial condition assessment and subsequent annual condition assessments; that any proposed archaeological investigations require the approval of the easement holders and permission by the landowner (including any proposed archaeological investigation in the 55-acre core area); that the location and siting for new construction require the review and approval by the easement holders and an authorized representative of the Army; and that the Army provide Phase I archaeological survey in association with the exercise of reserved rights in the easement.

In addition, the Army will document six Civil War-era historic properties on Fort A.P. Hill through still photography and video recordings, and further document four historic domestic sites on Fort A.P. Hill with public outreach archaeology projects and coordination with the Fort A.P. Hill Oral History Project. Additional archaeological investigations are proposed in the event the undertaking requires certain physical disturbance of additional historic properties on Fort A.P. Hill.

The Programmatic Agreement (PA) provides for consulting parties’ review and comment on all final technical reports and on the draft easement. The PA includes standard provisions for post review discoveries,

status reports, dispute resolution, duration (10 years), amendments, and termination.

Consulting parties in this effort included the Virginia State Historic Preservation Officer, the Advisory Council on Historic Preservation (ACHP), the United Keetoowah Band of Cherokee Indians in Oklahoma, the Virginia Council on Indians, the Rappahannock Tribe, the Archeological Society of Virginia, the National Park Service (Fredericksburg and Spotsylvania National Military Park), the Civil War Preservation Trust, the Council of Virginia Archaeologists, and the Caroline County Historical Society.

The ACHP initially declined to participate formally in this consultation when the Army first notified the agency. After subsequent consultation and as the Army proposed moving forward with the use of off-installation creative mitigation, the ACHP elected to participate because of the potentially significant precedent this approach would provide.



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