



**US Army Corps
of Engineers**
Baltimore District

INTEGRATED CULTURAL RESOURCE MANAGEMENT PLAN

**Fort George G. Meade,
Anne Arundel County, Maryland**

Updated December 2006

Prepared for: **Fort George G. Meade
Directorate of Public Works
Anne Arundel County, Maryland 20755-5115**

Prepared by: **U.S. Army Corps of Engineers, Baltimore District
P.O. Box 1715
Baltimore, Maryland 21203-1715**

**INTEGRATED CULTURAL RESOURCES MANAGEMENT PLAN, UPDATED
DECEMBER 2006
FORT GEORGE G. MEADE**

Reviewed and
Recommended for Approval By:

MICHAEL P. BUTLER
Chief, Environmental Division
Directorate of Public Works

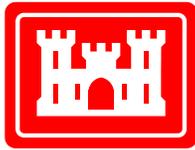
Recommended for Approval By:

CLYDE W. REYNOLDS
Director of Public Works
Fort George G. Meade, Maryland

Approved By:

KENNETH O. McCREEDY
Colonel, Military Intelligence
Commanding

INTEGRATED CULTURAL RESOURCES MANAGEMENT PLAN



Prepared for:

Fort George G. Meade
Directorate of Public Works
Anne Arundel County, Maryland 20755-5115

Prepared by:

U.S. Army Corps of Engineers
Baltimore District
P.O. Box 1715
Baltimore, Maryland 21203

Updated December 2006

EXECUTIVE SUMMARY

This Integrated Cultural Resources Management Plan (ICRMP) is an update of the ICRMP that was completed in 2001. This ICRMP provides guidelines and procedures to enable Fort George G. Meade (Fort Meade) to meet its legal responsibilities related to historic preservation and cultural resources management at the installation. The National Historic Preservation Act of 1966 (NHPA), as amended, as well as federal legislation, Department of Defense regulations (particularly Army Regulation 200-4, "Cultural Resources Management"), requires the Army and other federal agencies to locate, identify, evaluate and treat cultural resources under their ownership, administration and control in a manner that fosters the preservation of the resources.

Previous architectural investigations identified and evaluated all pre-1960 buildings located on Fort Meade for National Register of Historic Places (NRHP) eligibility. Fort Meade has two historic properties, the Fort Meade Historic District and the water treatment plant (Building 8688), that have been determined eligible for listing in the NRHP. Work conducted by Fort Meade since the completion of the 2001 ICRMP resulted in the determination that buildings in the 8000 area were not eligible for listing in the NRHP, and that several buildings in the district previously identified as historic properties were non-contributing resources in the historic district. Several structures (three bridges and five water towers) that have not previously been evaluated for NRHP eligibility were evaluated as part of this update.

No archeological fieldwork was completed for this project, as Phase I archaeological investigation has been completed at Fort Meade. The results of field investigations conducted since 2001 are incorporated in this document. There are a total of 40 known archeological sites on Fort Meade. One of these sites has been determined eligible for listing in the NRHP. Thirty-two other sites have been evaluated for NRHP eligibility and were found not eligible. The remaining seven sites are historic cemeteries and were evaluated for NRHP eligibility as part of this update. The seven cemeteries were found to be not eligible, although they are recommended for avoidance due to the presence of buried human remains.

TABLE OF CONTENTS

EXECUTIVE SUMMARYES-i

1.0 INTRODUCTION1-1

1.1 ORGANIZATION OF THE INTEGRATED CULTURAL RESOURCES MANAGEMENT PLAN.....1-3

1.2 DESCRIPTION OF FACILITY AND MISSION STATEMENT.....1-3

2.0 CULTURAL RESOURCES INVENTORY AND EVALUATION2-1

2.1 INTRODUCTION2-1

2.2 ARCHEOLOGICAL RESOURCES.....2-1

2.2.1 Documented Archeological Resources2-1

2.2.2 Previous Archeological Investigations2-3

2.3 ARCHITECTURAL RESOURCES2-11

2.3.1 Documented Architectural Resources.....2-11

3.0 CULTURAL RESOURCES PROTECTION PLAN.....3-1

3.1 OVERVIEW OF THE NATIONAL HISTORIC PRESERVATION ACT3-1

3.1.1 The Section 106 Process3-1

3.1.2 Undertaking Requiring Section 106 Review3-5

3.1.3 Standard Operating Procedures for Cultural Resources Management.....3-7

3.1.4 Criteria for Determining Significance and Effects3-12

3.1.5 Procedures for the Treatment of Both Known and Predicted Properties.....3-14

3.1.6 Archeological Procedures.....3-15

3.1.7 Archeological Resource Protection Act (ARPA) Compliance3-16

3.1.8 Emergency Procedures for Unexpected Discoveries of Archeological Deposits3-17

3.1.9 Tribal Consultation3-18

3.1.10 Discovery of Native American Human Remains or Associated Objects.....3-19

3.1.11 Disposition of Human Remains.....3-19

3.1.12 Storage of Archeological Artifacts.....3-21

3.1.13 National Environmental Policy Act (NEPA) Compliance.....3-21

3.1.14 Native American Graves Protection and Repatriation Act (NAGPRA) Compliance...3-22

3.1.15 American Indian Religious Freedom Act (AIRFA) Compliance.....3-23

3.1.16 Section 110 of the National Historic Preservation Act Compliance.....3-23

3.1.17 Section 111 of the National Historic Preservation Act Compliance.....3-23

4.0 REFERENCES4-1

LIST OF APPENDICES

- Appendix A – Physical Overview and Historic Background
- Appendix B – Archeological Procedures
- Appendix C – Programmatic Agreement for Operation, Maintenance, and Repair
- Appendix D – Tribal Consultation Plan
- Appendix E – Sample Letters and Agreement Documents for Coordination
- Appendix F – Cultural Resources Legislation, Regulations, and Guidelines

LIST OF TABLES

Table 2-1: Recorded Archeological Sites on Fort Meade.....	2-1
Table 2-2: Buildings Evaluated and Found Not Eligible.....	2-22
Table 2-3: NRHP Eligible Buildings.....	2-37

LIST OF FIGURES

Figure 1-1: Site Location, Ft. Meade, Maryland.....	1-5
Figure 2-1: National Register Eligible Structures.....	2-38
Figure 3-1: The Section 106 Review Process.....	3-4
Figure 3-2: Diagram of Native American Graves Protection and Repatriation Act (NAGPRA) Process.....	3-24

LIST OF PHOTOGRAPHS

Photo 2-1: Watts Cemetery.....	2-5
Photo 2-2: Sulphur Spring Cemetery.....	2-6
Photo 2-3: Friedhofer Cemetery.....	2-7
Photo 2-4: Downs Cemetery.....	2-8
Photo 2-5: Meeks Cemetery.....	2-9
Photo 2-6: Phelps Cemetery.....	2-10
Photo 2-7: Warfield/Clark Cemetery.....	2-11
Photo 2-8: Water Tower 001.....	2-12
Photo 2-9: Water Tower 002.....	2-14
Photo 2-10: Water Tower 003.....	2-15
Photo 2-11: Water Tower 004.....	2-16
Photo 2-12: Water Tower 008.....	2-17
Photo 2-13: Llewellyn Avenue Bridge.....	2-19
Photo 2-14: Redwood Avenue Bridge.....	2-20
Photo 2-15: Leonard Wood Avenue Bridge.....	2-21
Photo 2-16: Building 4215-Meade Hall.....	2-23
Photo 2-17: Building 4216-Pulaski Hall.....	2-24
Photo 2-18: Building 4217-Post Headquarters.....	2-25
Photo 2-19: Building 4230-Fire Station.....	2-26
Photo 2-20: Building 4411-Old Post Hospital.....	2-27
Photo 2-21: Building 4413-Garage.....	2-28
Photo 2-22: Building 4415-Kuhn Hall.....	2-29
Photo 2-23: Building 4419-Chapel.....	2-30
Photo 2-24: Building 4431-Theater.....	2-31
Photo 2-25: Building 4451-Hodges Hall.....	2-32
Photo 2-26: Building 4552-Van Deman Hall.....	2-33
Photo 2-27: Building 4553-Benjamin Tallmadge Hall.....	2-34
Photo 2-28: Building 4554-Nathan Hale Hall.....	2-35
Photo 2-29: Building 8688-Water Treatment Plant.....	2-36

1.0 INTRODUCTION

The National Historic Preservation Act (NHPA) (16 U.S.C. 470) of 1966, as amended, established a nationwide historic preservation program. The NHPA requires Federal agencies to integrate historic preservation into their programs. Section 106 of the NHPA requires Federal agencies to consider the effects of their actions on properties that are listed, or eligible for listing, in the National Register of Historic Places (NRHP). Section 110 of the NHPA directs Federal agencies to inventory and evaluate their properties and to provide stewardship and protection over significant historic properties. Department of the Army Pamphlet 200-4 (*Cultural Resources Management*) establishes standards and procedures for managing historic properties. Army Regulation 200-4 directs each installation to prepare an Integrated Cultural Resources Management Plan (ICRMP). This ICRMP is an update of the ICRMP that was prepared for Fort George G. Meade (Fort Meade) in 2001.

The NRHP is the official list of cultural resources, also known as “historic properties” that are significant in our nation’s history. The NRHP includes districts, buildings, sites, structures, and objects that are fifty years of age or older and are recognized as being significant in American history. Properties listed in the NRHP are significant at the national, state, or local level. The NRHP is a planning tool that identifies properties that are worthy of historic preservation. Currently there are no properties on Fort Meade that are listed in the NRHP. The Fort Meade Historic District and the water treatment plant (Building 8688) have been determined eligible for listing in the NRHP. The historic district comprises a mix of family housing, barracks, and administrative and support buildings. In 2003, ownership and management of 113 historic family housing units were transferred to a private, non-federal entity, as part of the 1996 Military Housing Privatization Initiative. There are 40 known archeological sites on Fort Meade; none of them are listed in the NRHP. All of the sites have been evaluated for NRHP eligibility and only one site was found to be eligible. The seven historic cemetery sites located on Fort Meade are not eligible for listing in the NRHP, but they are recommended for avoidance.

This document is intended to serve as a how-to manual for Fort Meade personnel to manage, plan, and prioritize the protection of cultural resources on the installation. This ICRMP provides guidance needed to identify and effectively manage cultural resources at Fort Meade. Cultural resources are defined as historic properties as defined in the NHPA, cultural items as defined in the Native American Graves Protection and Repatriation Act (NAGPRA), archeological resources as defined in the Archeological Resources Protection Act (ARPA), sacred sites as defined in Executive Order 13007 to which access is provided under the American Indian Religious Freedom Act, and collections as defined in 36 CFR 79, Curation of Federally Owned and Administered Collections.

The primary goal of this ICRMP is to identify, evaluate, and manage cultural resources at Fort Meade. By integrating cultural resources into a larger planning framework, the process of resource management is streamlined, and coordination can be easily accomplished between the State Historic Preservation Office (SHPO), in this case the Maryland Historical Trust (MHT), the Advisory Council on Historic Preservation (ACHP), and other interested preservation organizations. A wide variety of federal laws, regulations, executive orders, and procedures provide guidance and standards for the management of cultural resources. This document will

identify which of these laws and regulations Fort Meade is subject to and aid in compliance with them. Chapter 2 of AR 200-4 contains an overview of applicable cultural resources statutes. Chapter 3 of this ICRMP identifies the procedures installation staff must follow to comply with these statutes. In addition to this information, the ICRMP will also provide:

- an inventory and evaluation of all known architectural and archeological resources;
- prehistoric and historic contexts for the area now incorporated into the installation, as needed for evaluating historic properties that may be eligible for the NRHP;
- management strategies for maintaining and treating cultural resources in compliance with Army regulations and Federal cultural resources management laws and regulations;
- procedures for installation-wide coordination for projects which may affect cultural resources; and
- legislation, regulations, and standards and guidelines related to cultural resources.

In 2001 the U.S. Army Corps of Engineers, Baltimore District, prepared an updated ICRMP to the 1994 *Fort George G. Meade Cultural Resource Management Plan*. The inventory and evaluation of resources for NRHP eligibility is an ongoing process. With the completion of this ICRMP update, Fort Meade will have evaluated all known archeological sites on the installation for NRHP eligibility, as well as buildings and structures that were constructed before 1960 for NRHP eligibility. Since the 2001 ICRMP update, the inventory of cultural resources under the direct jurisdiction of Fort Meade has been significantly reduced by the transfer of property to other Federal agencies, as well as the transfer of the family housing units to a private, non-federal, entity.

The goals of the historic preservation program at Fort Meade are to:

- identify, evaluate, and manage historic properties and to maintain an up-to-date inventory of historic properties;
- comply with NHPA, NEPA, other applicable Federal laws, and Army directives in managing historic properties;
- integrate cultural resources management within installation master planning, environmental regulations, real property maintenance, and natural resource management plans and programs, and;
- preserve and protect cultural resources as part of Fort Meade's mission.

1.1 ORGANIZATION OF THE INTEGRATED CULTURAL RESOURCES MANAGEMENT PLAN

The Fort Meade ICRMP is organized into two primary sections (Chapters 2.0 and 3.0 of this report) and a series of technical appendices. The technical appendices were provided in the 2001 ICRMP update and, at Fort Meade's request, are not included as part of this update. The 2001 ICRMP should be referenced for copies of applicable laws and regulations.

Chapter 2.0: Cultural Resources Inventory and Evaluation

Chapter 2.0 defines the specific cultural resources found on Fort Meade. The first section of the chapter discusses previous surveys and summarizes their findings; the second section discusses the resources that were evaluated for NRHP eligibility as part of this update; and the third section is an inventory of Fort Meade's known and predicted cultural resources. Detailed information on working with the cultural resources is found in Chapter 3.0.

Chapter 3.0: Cultural Resource Protection Plan

Chapter 3.0 should be consulted for an explanation of the Section 106 process and the steps that cultural resource managers must take to ensure compliance with this and other federal and Army regulations pertaining to cultural resources. Standard operating procedures, as well as a discussion of the integration of a cultural resources plan into Fort Meade's Master Plan, conclude this section.

In order to prepare this plan, background research and site visits were conducted. Previous investigations and studies were reviewed and their findings included. For this report five water towers (constructed between 1928 and 1955), three bridges (constructed by German prisoners of war from 1944 to 1946), and seven historic cemeteries were evaluated for NRHP eligibility. The results of the Phase II archeological investigations on 20 sites conducted since 2001 are also included.

1.2 DESCRIPTION OF FACILITY AND MISSION STATEMENT

Fort Meade is dedicated to providing quality support to soldiers, their families, other Federal agencies and civilian employees. Fort Meade's mission is to provide leadership to support the approximately 114 tenant organizations from all four military services and many Federal agencies. Fort Meade also provides for the quality of life of the service members and families, civilian work force, and retirees, that make up the Fort Meade community.

Fort Meade consists of approximately 5,506 acres of land located in northern Anne Arundel County, Maryland. Fort Meade is located southeast of the Baltimore-Washington Parkway and west of I-97. Figure 1-1 shows the geographic location of Fort Meade. Originally known as Camp Meade, the facility was established as one of 32 military cantonments created by the Army after America's entry into the First World War in 1917. Camp Meade conducted a variety of functions related to the mobilization and training of soldiers. Building construction during this

time frame was generally temporary in nature. By October 1918, construction was completed on the main post at Camp Meade. Camp Meade served as a demobilization center at the end of World War I. After the end of the war the Army decided to purchase the lands Camp Meade had occupied in order to retain the \$18,000,000 worth of improvements the Army had made on the land.

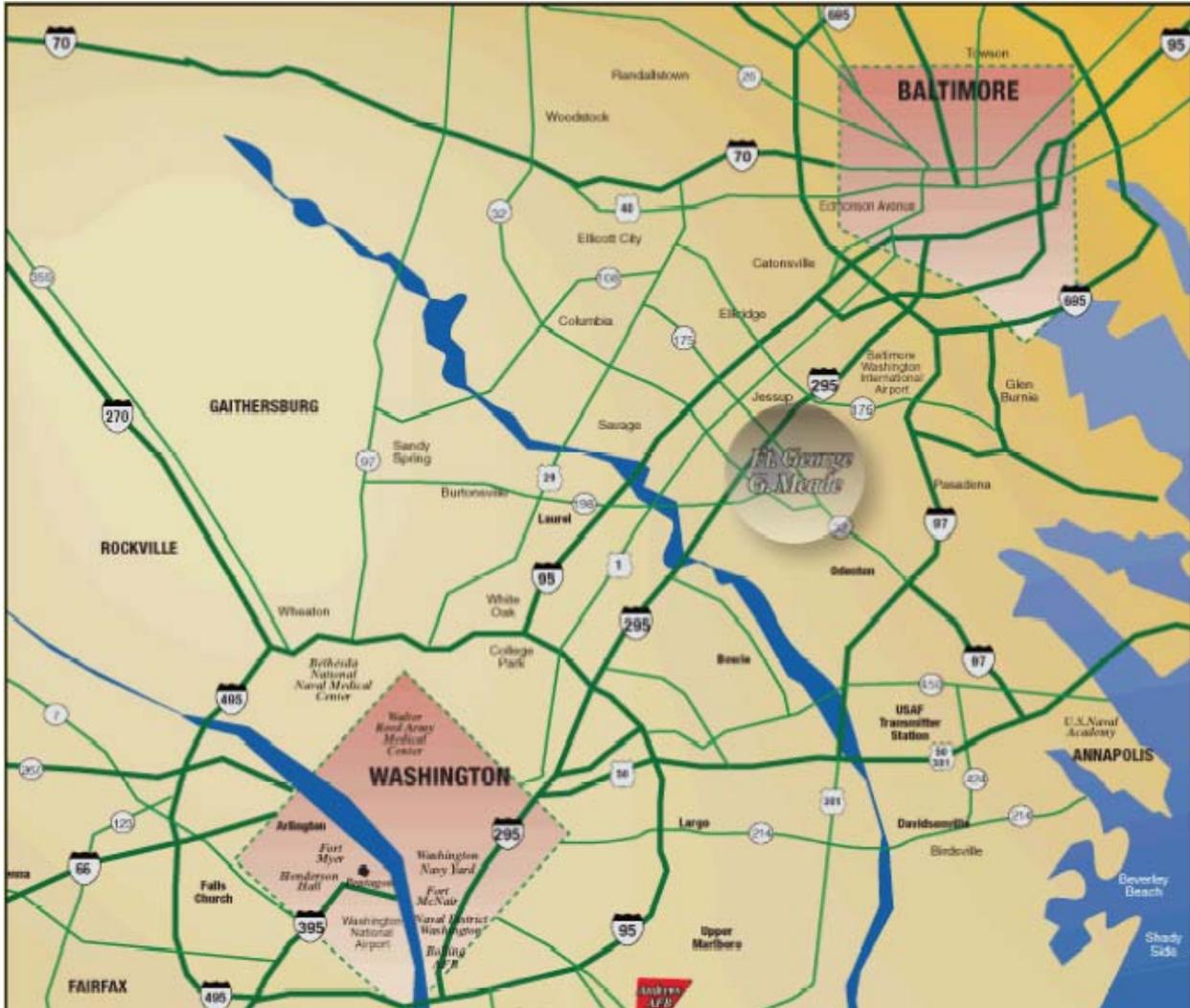
Camp Meade was used as a training facility during the 1920's and 1930's. One of the primary roles of the facility during the inter-war years was to serve as the home of the tank training school. Designated a permanent installation and renamed Fort Meade in 1928, construction at Fort Meade during this time period followed standardized plans developed by the Army's Quartermaster Corps. Family housing, troop support, and administrative buildings were constructed.

Fort Meade was used extensively during the Second World War. The 1940-1941 time frame at Fort Meade saw major changes on the landscape with the onset of World War II mobilization construction. Two major roles Fort Meade played during World War II were a troop replacement depot, and a prisoner of war camp for German and Italian prisoners. At the end of World War II, Fort Meade served as a separation center for troops being discharged from the military. Vacant facilities at Fort Meade were reopened with the outbreak of the Korean War in 1950. During the post war period military construction was limited to what was considered necessary to support the mission. There were two periods of construction in the 1950's for family housing. In 1952, numerous family housing units were constructed as part of the Wherry housing construction program. Additional family housing was constructed in 1959 as part of the Capehart housing construction program. Fort Meade has provided continuous support for ongoing base operations, tenant support, and until recently, family housing.

The majority of the tenants on the installation are covered by this ICRMP. There are several tenants located on Fort Meade whose operations on the installation are not covered by this document. These tenants are responsible for conducting their own Section 106 consultation with the MHT. The independent tenants are:

- Environmental Protection Agency
- National Security Agency (NSA)
- Picerne Military Housing

Figure 1-1: Site Location, Ft. Meade, Maryland



2.0 CULTURAL RESOURCES INVENTORY AND EVALUATION

2.1 INTRODUCTION

This section identifies the process by which archeological and architectural resources were identified and evaluated. Data from previous investigation is included in the relevant sections.

As part of this ICRMP update a total of 15 resources were evaluated for NRHP eligibility. These resources included three bridges constructed by German prisoners of war between 1944 and 1946, five water towers constructed between 1928 and 1955, and seven historic cemeteries. Section 3.1.4 of this document contains a discussion of the National Register criteria.

2.2 ARCHEOLOGICAL RESOURCES

2.2.1 Documented Archeological Resources

Previous archeological surveys on Fort Meade have identified 40 prehistoric and/or historic sites on the installation. Thirteen of the sites were found to not be NRHP eligible at the completion of Phase I investigations. Nineteen of the sites were recommended for additional investigation. Since the completion of the 2001 ICRMP update, Fort Meade has conducted Phase II investigation on the 19 sites that were recommended for additional investigation. None of these sites were found to be eligible for listing in the NRHP. During these site investigations, an additional prehistoric site, 18AN1240, was identified. This site was also evaluated for NRHP eligibility and was found to be eligible. NRHP eligibility of the seven historic cemeteries located on Fort Meade is evaluated in this document. Therefore, all archaeological resources on Fort Meade have been evaluated for NRHP eligibility, and only one (18AN1240) has been determined eligible.

Table 2-1: Recorded Archeological Sites on Fort Meade			
Site No.	Survey Level	Type of Site	Recommendation
18AN51	Phase II	Prehistoric	Not Eligible
18AN234	Phase II	Prehistoric	Not Eligible
18AN398	Phase II	Prehistoric/Historic	Not Eligible
18AN399	Phase II	Prehistoric	Not Eligible
18AN762	Phase II	Prehistoric	Not Eligible
18AN929	Phase II	Prehistoric	Not Eligible
18AN930	Phase II	Prehistoric	Not Eligible
18AN931	Phase II	Prehistoric	Not Eligible
18AN932	Phase II	Historic	Not Eligible
18AN970	Phase I	Watts Cemetery	Not Eligible

Table 2-1: Recorded Archeological Sites on Fort Meade

Site No.	Survey Level	Type of Site	Recommendation
18AN971	Phase I	Sulphur Spring Cemetery	Not Eligible
18AN972	Phase I	Friedhofer Cemetery	Not Eligible
18AN973	Phase I	Downs Cemetery	Not Eligible
18AN974	Phase II	Prehistoric	Not Eligible
18AN975	Phase II	Prehistoric	Not Eligible
18AN976	Phase I	Prehistoric/Historic	Not Eligible
18AN977	Phase I	Historic	Not Eligible
18AN978	Phase II	Prehistoric	Not Eligible
18AN979	Phase I	Historic	Not Eligible
18AN980	Phase I	Historic	Not Eligible
18AN981	Phase I	Historic	Not Eligible
18AN982	Phase II	Historic	Not Eligible
18AN983	Phase II	Historic	Not Eligible
18AN984	Phase I	Historic	Not Eligible
18AN985	Phase I	Prehistoric	Not Eligible
18AN986	Phase II	Prehistoric	Not Eligible
18AN987	Phase II	Historic	Not Eligible
18AN988	Phase II	Historic	Not Eligible
18AN989	Phase II	Prehistoric	Not Eligible
18AN990	Phase II	Historic	Not Eligible
18AN991	Phase I	Prehistoric/Historic	Not Eligible
18AN992	Phase I	Prehistoric	Not Eligible
18AN993	Phase I	Prehistoric	Not Eligible
18AN994	Phase I	Prehistoric	Not Eligible
18AN995	Phase I	Prehistoric	Not Eligible
18AN996	Phase I	Prehistoric	Not Eligible
18AN1240	Phase II	Prehistoric	Eligible
[To be Assigned]	Phase I	Meeks Cemetery	Not Eligible
[To be Assigned]	Phase I	Phelps Cemetery	Not Eligible
[To be Assigned]	Phase I	Warfield/Clark Cemetery	Not Eligible

2.2.2 Previous Archeological Investigations

Prior to the development of the 1994 CRMP, limited archeological investigations had been conducted at Fort Meade. Archeological investigations were conducted on a project-driven, case-by-case basis. Phase I testing in the early 1990's identified two sites: 18AN234 and 18AN762.

As part of the 1994 CRMP, an archeological sensitivity model was developed for Fort Meade. The model identified areas of high and low probability as well as previously disturbed areas. The CRMP recommended the survey of 2,710.6 acres, and no additional investigations of 1,852.9 acres. In order to test the validity of the archeological sensitivity model, a reconnaissance survey or Phase I testing was conducted on 407.7 acres. This field investigation identified a total of six additional archeological sites on Fort Meade.

As follow-up work recommended in the CRMP, additional investigations were conducted at Fort Meade. This work is described in the report *Phase I Archeological Survey of Approximately 2,210 Acres at Fort George G. Meade, Anne Arundel County, Maryland (Technical Appendix to the Fort George Meade Cultural Resource Management Plan)* (1995). This fieldwork resulted in the identification and documentation of an additional 29 archeological sites on Fort Meade. These sites include prehistoric, historic, and multiple occupation (prehistoric/historic) sites. Four historic cemeteries were included in these sites. Since the completion of this work three additional cemeteries have been reported on Fort Meade.

In the summer of 2002, Phase II investigations were conducted on Sites 18AN974, 18AN986, and 18AN987. Site 18AN974 is a prehistoric camp occupied during the Middle Archaic to Middle Woodland Periods. Site 18AN986 is a small prehistoric lithic scatter. Site 18AN987 is a domestic historic site dating to the late nineteenth century. None of these sites were recommended as eligible for listing in the NRHP as a result of the Phase II investigations. The MHT concurred that these sites were ineligible for listing in the NRHP in a letter dated January 9, 2003.

In the fall of 2002, Phase II field investigations were conducted on Sites 18AN762, 18AN975, and 18AN978. Site 18AN762 was a temporary camp site with occupations dating from the Early Archaic through the Late Woodland Periods. Site 18AN975 was a temporary camp site with occupations dating from the Archaic through the Late Woodland Periods. Site 18AN978 was a camp site occupied periodically from the Middle Archaic through the Late Woodland Periods. None of the sites were recommended as eligible for listing in the NRHP due to previous soil disturbance. The MHT concurred that these sites were ineligible for listing in the NRHP in a letter dated May 27, 2003.

During the winter of 2002/2003, Phase II field investigations were conducted on Sites 18AN398, 18AN929, 18AN982, 18AN983, 18AN988, and 18AN989. Site 18AN398 is a domestic historic site dating from the late 1700s to mid the mid-1800s. Site 18AN929 is a site containing Late Archaic and Late Woodland components. There were no features associated with this site. Sites 18AN982 and 18AN983 are mid-nineteenth century domestic sites. Site 18AN988 is the remains of a mid-nineteenth century residence. Site 18AN989 is a prehistoric camp site with

numerous occupations dating from the Middle Archaic through the Late Woodland Periods. None of these sites were recommended as eligible for listing in the NRHP as a result of the Phase II investigations. The MHT concurred that these sites were ineligible for listing in the NRHP in a letter dated October 21, 2003.

During the summer of 2003, Phase II field investigations were conducted on Sites 18AN51, 18AN234, 18AN399, 18AN930, 18AN931, 18AN932, and 18AN990. Site 18AN51 is a Late Archaic/Early Woodland camp site. Portions of this site have been disturbed and there are no remaining cultural features. Site 18AN234 was a prehistoric site that appears to have been destroyed by soil disturbing activities. Site 18AN399, originally identified as a prehistoric site, was a multi-component prehistoric/historic site. The site has prehistoric Woodland components and historic components dating to the mid-eighteenth century. Sites 18AN930 and 18AN931 were camp sites with components dating from the Late Archaic through Woodland Periods. Site 18AN932 was probably the site of the Patuxent Forge Post Office and General Store. Site 18AN990 is a site consisting of military training features such as trenches and foxholes. None of these sites were recommended as eligible for listing in the NRHP as a result of the Phase II investigations. The MHT concurred that these sites were ineligible for listing in the NRHP in a letter dated April 28, 2003.

The Phase II investigation of Sites 18AN930 and 18AN931 revealed the presence of Site 18AN1240, which had not been located during previous Phase I investigations. Site 18AN1240 appears to be a Late Archaic Period base camp. Field testing determined that the site had intact, and possibly stratified, artifact deposits. This site was recommended as being eligible for inclusion in the NRHP. The MHT concurred with this recommendation in a letter dated April 28, 2003.

The Cemeteries

There are a total of nine cemeteries located on Fort Meade, seven of which are considered historic archeological sites. Four of the nine cemeteries were included in the inventory and have been given site numbers. A Maryland Site Survey Basic Data Form has been prepared for each of the three additional historic cemeteries. The remaining two cemeteries, the Bethel Cemetery and the Post Cemetery, are not considered as historic sites as they are still in active use.

Watts Cemetery



Photo 2-1: Watts Cemetery

Site 18AN970 is also known as the Watts Cemetery. The cemetery contains two marked and four unmarked burial sites. This cemetery does not contain the graves of any persons of transcendent importance, is not associated with historic events, does not possess distinctive design features, and is not of significant age. The site has limited research potential so does not meet NRHP Criteria Consideration D. The Watts Cemetery is therefore ineligible for listing in the NRHP.

Sulphur Spring Cemetery



Photo 2-2: Sulphur Spring Cemetery

Site 18AN971 is also known as the Sulphur Spring Cemetery. Previous data indicated there were 24 graves dating from 1860 to 1988. A 2005 field visit indicated that there is at least one burial that took place since 1988. This cemetery is located on a small hill east of Route 175 near a family housing area. This cemetery does not contain the graves of any persons of transcendent importance, is not associated with historic events, does not possess distinctive design features, and is not of significant age. The site has limited research potential so does not meet NRHP Criteria Consideration D. The Sulphur Spring Cemetery is therefore ineligible for listing in the NRHP.

Friedhofer Cemetery



Photo 2-3: Friedhofer Cemetery

Site 18AN972 is also known as the Friedhofer Cemetery. The cemetery contains eight graves ranging in date from 1855 to 1946. This cemetery does not contain the graves of any persons of transcendent importance, is not associated with historic events, does not possess distinctive design features, and is not of significant age. The site has limited research potential so does not meet NRHP Criteria Consideration D. The Friedhofer Cemetery is therefore ineligible for listing in the NRHP.

Downs Cemetery



Photo 2-4: Downs Cemetery

Site 18AN973 is the Downs Cemetery. This cemetery is located on a wooded knoll near the golf club house. The cemetery contains two grave markers dating from 1875 and 1883. This cemetery does not contain the graves of any persons of transcendent importance, is not associated with historic events, does not possess distinctive design features, and is not of significant age. The site has limited research value and does not meet NRHP Criteria Consideration D. The Downs Cemetery is therefore ineligible for listing in the NRHP.

Meeks Cemetery



Photo 2-5: Meeks Cemetery

The Meeks Cemetery does not currently have a Maryland Site inventory number. The cemetery is located in a wooded area near the intersection of Cooper and 2nd Cavalry Avenues. This location is marked as a cemetery on the USGS quad sheet, but previous investigations did not identify this as a site. In 2003, a geophysical investigation was conducted at this site. The geophysical survey report indicates that this location is marked as a cemetery on a 1919 map, but the report did not include a bibliographic reference for the 1919 map. Then geophysical investigation was conducted using ground penetrating radar (GPR) and metal detectors. The geophysical survey indicated that there were two areas that probably contained individual burials. There is one possible stone marker associated with this cemetery. This cemetery does not contain the graves of any persons of transcendent importance, is not associated with historic events, does not possess distinctive design features, or from age. The site has limited research value so does not meet NRHP Criteria Consideration D. The Meeks Cemetery is therefore ineligible for listing in the NRHP.

Phelps Cemetery



Photo 2-6: Phelps Cemetery

The Phelps Cemetery does not currently have a Maryland site inventory number. The cemetery is located in a wooded area adjacent to the landfill south of Route 32. This area is not marked as a cemetery on the Odenton USGS quad sheet. There are three stone markers dating back to the nineteenth century. This cemetery does not contain the graves of any persons of transcendent importance, is not associated with historic events, does not possess distinctive design features, and is not of significant age. The site has limited research value so does not meet NRHP Criteria Consideration D. The Phelps Cemetery is therefore ineligible for listing in the NRHP.

Warfield/Clark Cemetery



Photo 2-7: Warfield/Clark Cemetery

The Warfield/Clark Cemetery is also being included, even though it is still in periodic use. This cemetery has graves dating to the 19th century but the majority of the burials have taken place since 1950, the most recent dating to 2004. The site is marked as the “Hospital Chapel Cemetery” on the Odenton USGS quad sheet. Nineteen stone markers were visible at this cemetery. The cemetery is located at the end of a dirt road, approximately one-half mile northwest of the Fort Meade High School. This cemetery does not contain the graves of any persons of transcendent importance, is not associated with historic events, does not possess distinctive design features, and is not of significant age. The site has limited research potential so does not meet NRHP Criteria Consideration D. The Warfield/Clark Cemetery is therefore ineligible for listing in the NRHP.

2.3 ARCHITECTURAL RESOURCES

2.3.1 Documented Architectural Resources

There are no buildings on Fort Meade that are listed in the NRHP. Fort Meade has two historic properties that have been determined eligible for listing in the NRHP. The historic properties are the Fort Meade Historic District, and the water treatment plant (Building 8688). There are 13 contributing buildings remaining in the Fort Meade Historic District. The NRHP eligible buildings will be described later in this section. The first part of this section will evaluate the five water towers and three bridges for NRHP eligibility. The second part of this section will discuss Determinations Of Eligibility (DOEs) that have been completed or revised since the last ICRMP update. The third section will include information on the NRHP eligible buildings.

The Water Towers

The water towers at Fort Meade were constructed between 1928 and 1955. The water towers were constructed across the installation with no apparent plan. Two water towers are associated with the Camp Meade period and the transition to a permanent installation. Two water towers are associated with World War II mobilization construction. The fifth water tower was constructed in 1955. This water tower is located near a family housing area. Construction of this water tower predated the housing area, which was built in 1959.

Water towers are common features on military installations. They are primarily used to hold water for human consumption or fire fighting. Historically, water towers were frequently used to store water for agricultural or transportation uses. The water stored in the water towers at Fort Meade is potable.

Water Tower 001



Photo 2-8: Water Tower 001

Water Tower 001 (WT001), constructed in 1928, is the oldest water tower at Fort Meade. WT001 is located northwest of the intersection of Simonds and Zimborski Streets. The circular

steel water tower has a conical cap, a height of 113 feet, and a capacity of 200,000 gallons of water. Six metal frame legs support the tower along with a centrally located metal stand pipe leading from the ground to the storage tank.

WT001 was constructed west of Fort Meade's main cantonment. WT001 is located near Building 8601, which was constructed in 1936 as a mess hall for the Citizen's Military Training Camp (CMTC). There were four areas at Fort Meade designated for CMTC training. WT001 was constructed in the training area designated area "A" for the CMTC program.

WT001 was considered for NRHP eligibility in association with National Register Criteria A and C, and it was found that the water tower was not associated with events that have made a significant contribution in American history, is not the work of a master, and does not have distinctive characteristics. In addition, the water tower's setting has been altered, affecting the integrity of the tower. Building 8601, the remaining building associated with the CMTC training, has been altered and was found not eligible for the NRHP in the 1994 CRMP. The removal of the remaining buildings associated with the CMTC training affect the feeling and association of the tower. Additionally, in 1954 a new cantonment area was constructed surrounding WT001, further compromising the integrity of the setting. Therefore, WT001 is not eligible for inclusion in the NRHP.

Water Tower 002



Photo 2-9: Water Tower 002

Water Tower 002 (WT002) is located near Building T-2250 along Rock Avenue in the southeastern portion of Fort Meade. WT002 was constructed in 1934, near a former military industrial operations area, south and east of what is now the Fort Meade Historic District. WT002 is very similar in design and construction to WT001. WT002 is 110 feet tall and has a capacity of 300,000 gallons of water. WT002 is a circular steel tank covered with a conical cap. Six metal frame legs support the tower along with a centrally located metal stand pipe leading from the ground to the storage tank.

WT002 was considered for NR eligibility in association with National Register Criteria A and C, but it was found that that it was not associated with events that have made a significant contribution in American history, is not the work of a master, and does not have distinctive characteristics. In addition, WT002 is surrounded by buildings that are not eligible for listing in the NRHP. WT002 is not eligible for listing in the NRHP.

Water Tower 003



Photo 2-10: Water Tower 003

Water Tower 3 (WT003) was constructed in 1941. The structure is located east of Route 175 and north of Reese Road near the 1900 building area and the Sulphur Springs Cemetery. This location is some of the highest ground on Fort Meade. The water tower is not elevated and it has a capacity of 600,000 gallons of water. The water tower is a circular steel ground tank, with a flat steel roof, that sits on a concrete platform. The water tower was constructed near a complex of WWII temporary wooden buildings, but majority of the temporary buildings have been removed. WT003 is located near the site of buildings related to the MISSILE MASTER NIKE system which was utilized at Fort Meade during the mid-1950's, and is also near modern family housing units.

WT003 was considered for NR eligibility in association with National Register Criteria A and C, but it was found that that it was not associated with events that have made a significant contribution in American history, it is not the work of a master, and it does not have distinctive characteristics. The setting, feeling, and association of the tower have been altered. WT003 is not eligible for inclusion in the NRHP.

Water Tower 004



Photo 2-11: Water Tower 004

Water Tower 004 (WT004) was also constructed in 1941. The tower is located on Hunt Hill, near Route 175 and 26th Street, one of the highest points on the northern part of the post. The tower is 106 feet tall and has a capacity of 500,000 gallons of water. The circular tank is steel and is covered with a conical steel cap. WT004 is supported by six metal frame legs along with a centrally located metal standpipe leading from the bottom of the tank to the ground. WT004 sits alone in a wooded area, with a small storage building located at the base of the tower. WT004 was constructed near a complex of World War II temporary wooden buildings. All of these buildings have been removed, and the only buildings in the vicinity of the tower are the Fort Meade Senior High School and Meade Middle School.

WT004 was considered for NR eligibility in association with National Register Criteria A and C, but it was found that that it was not associated with events that have made a significant contribution in American history, it is not the work of a master, and it does not have distinctive characteristics. WT004 was apparently constructed to support the grouping of WWII

mobilization buildings located to its south. These buildings have all been demolished. The setting, feeling, and association of the tower have been altered. WT004 is not eligible for inclusion in the NRHP.

Water Tower 008



Photo 2-12: Water Tower 008

Water Tower 008 (WT008) was constructed in 1955 in the northern portion of Fort Meade. In 1959, work began on Capehart housing units that currently surround the tower. WT008 is 116 feet tall and has the capacity for 600,000 gallons of water. It is a circular steel tank supported by six round metal support legs. A centrally located metal standpipe extends from the bottom of the tank to the ground.

WT008 was considered for NR eligibility in association with National Register Criteria A and C, but it was found that that it was not associated with events that have made a significant contribution in American history, is not the work of a master, and does not have distinctive characteristics. WT008 is not eligible for inclusion in the NRHP.

The Bridges Built by German Prisoners of War

History of the Bridges

A portion of the southwestern portion of Fort Meade was utilized as a prisoner of war (POW) camp during the Second World War. During the war, POWs were spread across 511 branch camps in 44 states across the nation. The German POW population in the United States reached a peak of 425,000 in May and June of 1945. The Fort Meade POW camp facilities, consisting of temporary wood frame buildings and tents, were used to house both Italian and German POWs. The first shipment of POWs, consisting of 1,632 Italian and 58 German soldiers, arrived at Fort Meade in September of 1943.

In May of 1944, the Fort Meade POW camp was expanded to house 2,000 German POWs. The camp was divided into three sections: Enlisted Men's, Anti-Nazi, and Officers' Camps. In addition to the main camp at Fort Meade, there were an additional 18 branch/work camps located in Maryland. In August of 1945, the German POW population in Maryland reached a peak of 9,300 soldiers. Nationwide, many of the POWs were employed during the war. They were primarily used in agriculture and manufacturing to replace men serving in the military. In Maryland, POWs were typically employed in agricultural, pulp wood, and industrial activities. In 1944, the German POWs began operating the post laundry on Fort Meade. There is also oral history that indicates the POWs may have been involved in conducting maintenance and repair work in the military family housing residences on Fort Meade.

German POWs were also utilized in the construction of three bridges at Fort Meade. The bridges are located at stream crossings on the Franklin Branch Creek. The bridges are located on Llewellyn, Redwood, and Leonard Wood Avenues, and were all designed by the U.S. Army Corps of Engineers.

Since the POWs were primarily involved with agricultural production, there are virtually no physical reminders of their presence in Maryland. The facilities associated with the POW camp have all been removed. The bridges are among the few tangible reminders of the POW presence at Fort Meade and in Maryland during World War II. The bridges are the only known structures built on a military installation in Maryland by POW labor. The only other known structure in Maryland built by POW labor is the entrance gate to a satellite POW camp located in Germantown, Maryland. Today the stone gate serves as the entrance to the Emory Grove Center near Gaithersburg, Maryland.

Description of the Bridges

Llewellyn Avenue Bridge



Photo 2-13: Llewellyn Avenue Bridge

The Llewellyn Avenue Bridge was constructed in 1945. It is a two-lane, flat concrete slab structure with stone-faced, raised side walls topped with cement capstones. The bridge itself is 39' 2" wide at its narrowest portion (the center of its span), and is 60' wide at its widest portion (from wing wall to wing wall). The bridge is 39' 2" long. Two concrete channels carry the stream under the bridge. The bridge has a sandstone memorial plaque that reads:

*Hoc opus captivi
germanici perfecerunt
AD MCMXLV*

The rough translation of the Latin for the inscriptions is:

“The hard work of German prisoners built this”

Redwood Avenue Bridge

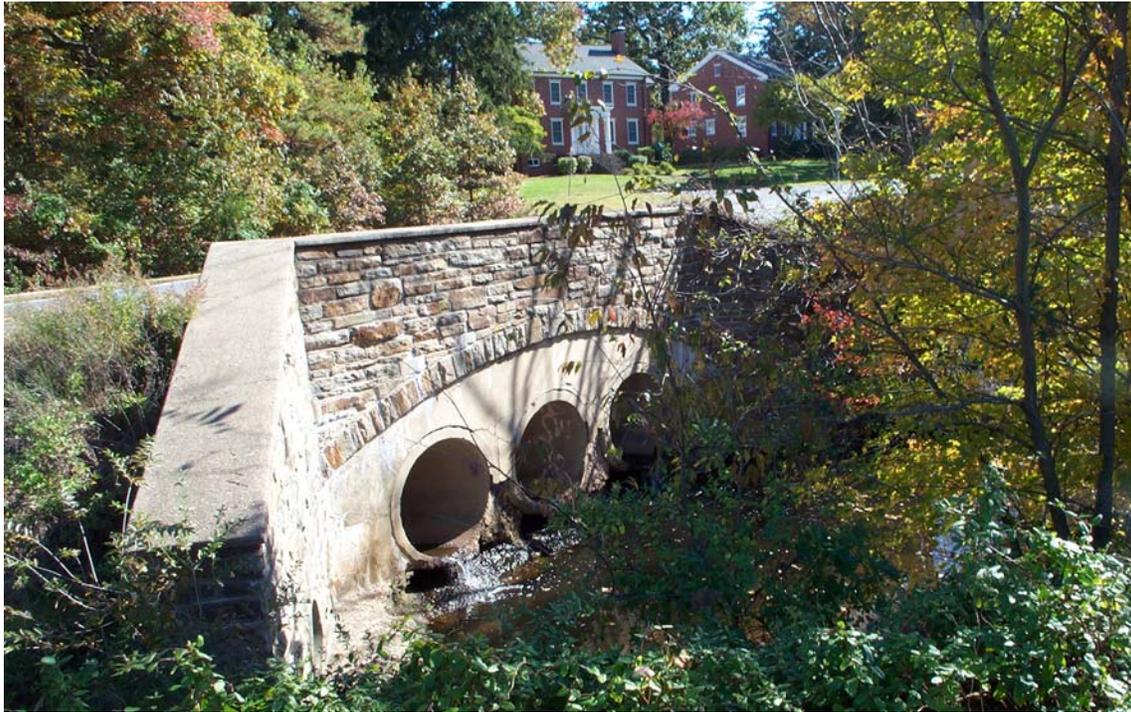


Photo 2-14: Redwood Avenue Bridge

The Redwood Avenue Bridge was constructed in 1944. It is the most ornate of the three bridges constructed by the POWs. The bridge is a concrete structure with stone facing on the side walls. The sidewalls have a concrete capstone on the west wall and a stone capstone on the east wall. The bridge is two lanes wide. The bridge itself is 39' 6" wide at its narrowest portion (the center of its span), and 61' 6" wide at its widest portion (from wing wall to wing wall). The bridge is 44' 6" long. The span under the bridge is arched. A portion of the west exterior stone facing has collapsed and been repaired. Three concrete culverts carry the stream flow under the bridge. There is also a small stone wing wall located in the stream channel on the north east (upstream) side of the bridge. A portion of the stone façade on the south wall has collapsed into the stream. The area that failed has been repaired and the repair is not detectable. The bridge contains a sandstone memorial plaque, similar to the plaque on the Llewellyn Avenue Bridge, that reads:

*Hoc opus captivi est
captis germanici
AD MCMXLIV*

Leonard Wood Avenue Bridge



Photo 2-15: Leonard Wood Avenue Bridge

The Leonard Wood Avenue Bridge is the least decorative of the three bridges. This flat, two-laned concrete bridge was constructed in 1946. The bridge itself is 41' 10" wide at its narrowest portion (the center of its span), and is 59' 2" wide at its widest portion (from wing wall to wing wall). The bridge is 40' 2" long. The side walls are made of cinder block and are six courses high and are finished with a concrete capstone. The side walls are stepped. Three ovate conduits carry the water under the bridge. As on the other two bridges, there is an eroded sandstone memorial plaque on the bridge that reads:

*Hoc opus captivi
germanici perfecerunt
AD MCMXLVI*

NRHP Eligibility of the Bridges

The three bridges built by German POWs were evaluated for NRHP eligibility under Criterion A, for "events that have made a significant contribution to the broad patterns of our history." The level of significance was considered at the local and state level. The Area of Significance considered was military history, and the period of significance is 1944 to 1946, the dates of construction.

The three stone bridges at Fort Meade are historically significant for their association with the German POWs in Maryland during World War II. The bridges are significant as the only known structures built by POW labor on a military installation in Maryland during the war. The bridges are all recommended as being eligible for listing in the NRHP.

Finalized/Amended Determinations of Eligibility

The 2001 ICRMP update recommended that Buildings 2587A, 2590A, 4523A, 4528A, 4542A, and 4548A were contributing buildings in the Fort Meade Historic District. The MHT agreed with this recommendation. These buildings are small brick utility buildings that were constructed in various locations in the historic housing area at Fort Meade in 1947 and 1948. After the completion of the ICRMP, the NRHP status of these buildings was re-evaluated. In a letter dated August 5, 2003, the MHT concurred that these buildings were not eligible for listing in the NRHP. As a result of this concurrence, the buildings are not considered historic structures and are not contributing buildings in the Fort Meade Historic District.

In consultation with the MHT, it was also determined that Building 4585, a bath house originally identified as a contributing building in the Fort Meade Historic District in the 1994 CRMP, was not eligible for listing in the NRHP. The building's integrity was compromised by exterior alterations. The stucco finish was ruined by the addition of aluminum siding and the construction of concrete privacy walls separating the men's and women's entrances.

The 2001 ICRMP also recommended that a grouping of barracks and support buildings located in the 8400 and 8500 area be evaluated for NRHP eligibility when they became 50 years old. These buildings were constructed in 1954 and 1955 as barracks and administrative support buildings. All of these buildings have been evaluated and were found not eligible for listing in the NRHP. The following Table lists the status of these buildings.

Table 2-2: Buildings Evaluated and Found Not Eligible				
Building No.	Date	Original Use	NRHP Eligible	Date of MHT Concurrence
8478	1955	Barracks	No	3/29/2005
8479	1955	Barracks	No	3/29/2005
8542	1954	Admin/Gen. Purpose	No	2/10/2005
8543	1954	Barracks	No	2/10/2005
8544	1954	Barracks	No	2/10/2005
8545	1954	Barracks	No	2/10/2005
8605	1954	Barracks	No	2/10/2005
8606	1954	Barracks	No	2/10/2005
8607	1954	Barracks	No	2/10/2005
8608	1954	Battalion HQ	No	3/15/2004
8609	1954	Barracks	No	2/10/2005
8610	1954	Barracks	No	2/10/2005
8611	1954	Barracks	No	7/26/2004
8612	1954	Admin/Gen. Purpose	No	3/15/2004

Historic Buildings

The following section discusses buildings that have already been evaluated for NRHP eligibility. The buildings discussed in this section have been found eligible for listing in the NRHP. These are the only buildings on Fort Meade that are considered historic properties. This section contains a brief architectural description and discussion of historic significance for each building.

Building 4215: Meade Hall



Photo 2-16: Building 4215-Meade Hall

This building is one of the earliest permanent brick buildings constructed on Fort Meade. It was one of three brick barracks constructed in 1928 to house troops. It is now used for administrative space. The Georgian Colonial Revival building is a concrete frame three-and-a-half-story, gable-roofed building. The concrete walls are clad with brick facing. The original slate roof has been replaced with composition shingles. The primary façade faces to the north. The building has an irregular E-shape, defined by three three-and-a-half-story hyphens that extend from the rear elevation. There are twenty-one bays on the front elevation, and all of the original windows have been replaced with vinyl clad units. Building 4215 is significant under the NRHP Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4216: Pulaski Hall



Photo 2-17: Building 4216-Pulaski Hall

This building is one of the earliest permanent brick buildings constructed on Fort Meade. It was one of three brick barracks constructed in 1928 to house troops. It is now used for administrative space. The building exhibits Georgian Colonial Revival style elements. The three-and-a-half-story building has concrete frame walls clad with brick facing. The gable roof is covered with composition shingles. Building 4216 sits on a raised poured concrete foundation. Many of the architectural features are identical to those of Meade Hall. Building 4216 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4217: Post Headquarters



Photo 2-18: Building 4217-Post Headquarters

This building was designed to house one company of troops (289 men) as well as serve as the post headquarters. It was constructed in 1928 and is stylistically very similar Buildings 4215 and 4216. It is a three and a half-story brick building with Georgian Colonial Revival stylistic elements. The building sits on a reinforced concrete foundation. The concrete frame walls are clad with brick veneer. The windows have been replaced with six-over-six vinyl clad units. The gable roof is covered with composition shingles. Building 4217 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4230: Fire Station



Photo 2-19: Building 4230-Fire Station

This Colonial Revival style brick building was constructed in 1934 as the fire house. This two-story, four-bay building has an irregularly-shaped footprint. The building has five-course, common bond, brick walls with a limestone belt course separating the first and second stories on the side elevation wings. The original slate roof has been replaced with shingles. The original windows have been replaced with one-over-one vinyl clad units. Building 4230 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4411: Old Post Hospital



Photo 2-20: Building 4411-Old Post Hospital

Constructed in 1930 as the first permanent hospital on post, this building has Georgian Colonial Revival architectural elements. The three-story brick building sits on a raised brick foundation; it has a shingle-covered hipped roof. The central core is flanked by gable wings on the south, east, and west elevations. The central core is symmetrical and is nine bays wide. The entrance portico has a full entablature and a sandstone balustrade supported by two limestone Doric columns. Windows on the first and second floor have limestone lintels and sills, while the basement and third floor windows in the central core have brick jack arch lintels. Building 4411 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4413: Garage



Photo 2-21: Building 4413-Garage

This brick building was constructed in 1931 as an ambulance garage. The hipped roof is covered with slate shingles, and a plain wood cornice surrounds the entire building. The building has four bays on the north elevation, each with a wood track overhead door. Building 4413 is a minor contributing building in the historic district.

Building 4415: Kuhn Hall



Photo 2-22: Building 4415-Kuhn Hall

This building, located adjacent to Building 4411, was constructed in 1931 as Nurses' Quarters. It is now used as the Distinguished Visitors' Quarters. This rectangular, two-and-a-half-story building has a symmetrical façade that is nine bays wide. The building sits on a reinforced concrete foundation. The concrete frame walls are clad with brick veneer. Building 4415 has Georgian Colonial style architectural elements. The hipped roof is clad with composition shingles. The windows have limestone sills and lintels, and the window units are six-over-six, light, double-hung sash units. Building 4415 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4419: Chapel



Photo 2-23: Building 4419-Chapel

This building was constructed in 1934 as the Post Chapel. The L-shaped one-and-a-half-story building has Flemish bond brick walls. The gable roof is covered with slate shingles, and a wooden bell tower is located above the main entry way. The main entrance is located under a round stained glass window and is flanked by eight-foot arched, stained glass windows. A brick entablature is located above the entrance on the north elevation. Building 4419 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4431: Theater



Photo 2-24: Building 4431-Theater

This two-and-a-half-story brick building was constructed in 1933 as the post theater. The building displays Georgian Colonial Revival stylistic elements. Windows are located on the second story of the projection located on the north end of the building. The windows have concrete sills and keystones, and are six-over-six, double-hung sash units. The gable roof is covered with composition shingles. Building 4431 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4451: Hodges Hall



Photo 2-25: Building 4451-Hodges Hall

This building has served as a headquarters building since its construction in 1934. The two-story, rectangular brick building sits on a raised basement and has a shingle-covered gable roof. The building is symmetrical in design. The central core is five bays wide, and is flanked by wings on the east and west elevations that are three bays wide. A main architectural component of the building is the centrally located octagonal cupola on the central core of the building. A wood deck runs between the brick chimneys along the spine of the roof ridge line. Brick quoins are located at each corner of the building. Building 4451 is very similar in design to Doughoregan Manor, an eighteenth century manor house located in Howard County, Maryland. Building 4451 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4552: Van Deman Hall



Photo 2-26: Building 4552-Van Deman Hall

This building is one of three large barracks buildings constructed between 1929 and 1940 that comprise a large building complex that includes Buildings 4553 (Tallmadge Hall) and 4554 (Hale Hall). The three buildings are situated in an “L” shaped pattern. Building 4552 was constructed in 1940 as a 250-man barracks. It is now used as an administrative building. It has Georgian Colonial Revival design elements. The three-story building sits on a raised concrete basement, has brick clad concrete wall, and has a shingle-covered gable roof. The building has an H-shaped footprint. The long, narrow, central core is flanked on each end by a projecting gable wing. The majority of the windows on the first and second floors have been infilled with brick. The remaining third floor windows are vinyl clad, six-over-six, light, double-hung units with three fixed light transoms. There are open verandas located at each level on the rear elevation. Building 4552 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920’s through 1940’s.

Building 4553: Benjamin Tallmadge Hall



Photo 2-27: Building 4553-Benjamin Tallmadge Hall

This building is one of three large barracks buildings constructed between 1929 and 1940 that comprise a large building complex. Building 4553 was constructed in 1929 as a 399-man barracks. It is now used as an administration building. The building exhibits Georgian Colonial Revival design elements. The three-story building sits on a concrete foundation. It has concrete block walls covered with a brick façade. It has a protruding central bay that is flanked by sandstone porticoes. Building 4553 is symmetrical in design. The gable roof is covered with shingles. The pediments and cornices have modillions, and a fan light window is located in the cross gable pediment. The windows are six-over-six, light, double-hung windows with three fixed light transoms at the top. Elevated verandas are located on the rear of the building. Building 4553 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 4554: Nathan Hale Hall



Photo 2-28: Building 4554-Nathan Hale Hall

This building is one of three large barracks buildings constructed between 1929 and 1940 that comprise a large L-shaped building complex. Building 4554 was constructed in 1929 as a 399-man barracks building. It is now used as an administrative building. The three-story building exhibits Georgian Colonial Revival design elements. The walls are constructed of concrete block and are faced with a brick veneer. Building 4554 has a shingle-covered gable roof. Many of the windows on the south elevation have been bricked in. The remaining windows are six-over-six, light, double-hung vinyl clad units with three fixed light transoms. The pediments and cornices have modillions, and a fan light window is located in the cross gable pediment. There are elevated verandas located on the rear of the building. Building 4554 is significant under the National Register Areas of Significance for architecture and military history. The Areas of Significance are associated with the development of Fort Meade as a permanent Army installation in the 1920's through 1940's.

Building 8688: Water Treatment Plant



Photo 2-29: Building 8688-Water Treatment Plant

This Art Moderne-designed building was constructed in 1941. The concrete and brick building houses the water filtration system for the installation. Building 8688 has a reinforced concrete basement, brick walls, and a flat gravel covered roof. The majority of the original architectural features are still intact on the building. The doors have been replaced with modern glass and frame units, and the windows on the south elevation have been infilled with glass block. The remaining windows are five light, metal frame hopper units. The windows are symmetrically placed on all of the elevations. The exterior brick and concrete work retains decorative Art Moderne elements. The building is significant under National Register C for its association with architecture as an example of Art Moderne design.

Table 2-3 lists each of the historic buildings discussed in this section. Figure 2-1 shows the location of each building.

Table 2-3: NRHP Eligible Buildings

Building Number	Building Name	Construction Date	Original Use	Current Use	Quartermaster Plan
4215	Meade Hall	1928	Barracks	Administrative	621-540
4216	Pulaski Hall	1928	Barracks	Administrative	621-530
4217	Post Headquarters	1928	Barracks	Administrative	621-550
4230	Fire Station	1934	Fire Station	Vehicle Storage	634-125
4411	Old Post Hospital	1930	Hospital	Administrative	6118-700
4413	Garage	1931	Ambulance Garage	Vehicle Storage	6118-676
4415	Kuhn Hall	1931	Nurse's Quarters	Military Officer Housing	6118-745
4419	Chapel	1934	Chapel	Chapel	6118-820
4431	Theater	1933	Theater	Theater	608-200
4551	Hodges Hall	1934	Administrative	Administrative	6118-761-774
4552	Van Deman Hall	1940	Barracks	Administrative	621-1900
4553	Benjamin Tallmadge Hall	1929	Barracks	Administrative	Unknown
4554	Nathan Hale Hall	1929	Barracks	Administrative	621-640 (5008)
8688	Water Treatment Plant	1941	Water Treatment Plant	Water Treatment Plant	6118-1076

Figure 2-1: National Register Eligible Structures



Legend

-  Buildings
-  Bridges

1:6,000



US Army Corps
of Engineers®
Baltimore District

3.0 CULTURAL RESOURCES PROTECTION PLAN

3.1 OVERVIEW OF THE NATIONAL HISTORIC PRESERVATION ACT

In 1966, Congress passed the National Historic Preservation Act (NHPA), expanding an existing register of national landmarks into the National Register of Historic Places (NRHP), establishing the Advisory Council on Historic Preservation (ACHP), and initiating a program of Federal grants to the states. The NRHP is the official list of America's properties deemed worthy of preservation. The ACHP is an independent Federal agency that consults with other Federal agencies in matters pertaining to historic properties, and reviews Federal agency undertakings affecting, or having the potential to affect, such properties. Additionally, the ACHP has advisory responsibilities to the President and the Congress of the United States, and manages a program of research, teaching, and publication.

Sections 106, 110, and 111 of the NHPA identify Federal agency responsibilities for the protection of historic properties. Section 106 requires Federal agencies to consider how their activities may affect historic properties. Section 110 directs Federal agencies to establish a program to identify and protect historic properties, and to comply with other Federal regulations that are preservation-related. Section 111 allows Federal agencies to lease historic properties, and to use the proceeds to defray the costs of maintaining such properties.

At Fort Meade, the Directorate of Public Works, Environmental Division (DPW-ED) is responsible for compliance with historic property management and preservation regulations. The current point of contact at the DPW-ED is Mr. Joe DiGiovanni (301-677-9855). This plan recommends that any staff at Fort Meade involved in cultural resources management should take the ACHP's course, "Introduction to Federal Projects and Historic Preservation Law."

3.1.1 The Section 106 Process

Under Section 106 of the NHPA, as amended, all Federal agencies are mandated to take into account how their undertakings affect, or have the potential to affect, historic properties. Moreover, the Federal agencies must allow the ACHP a reasonable opportunity to comment on any Federal undertakings affecting historic properties. This process is often termed the "Section 106 Review" (Figure 3-1). The implementing regulations for Section 106 are found at 36 CFR 800, *Protection of Historic Properties*. Federal undertakings include construction, demolition, rehabilitation, repair, licensing, permitting, financing, and planning. Historic properties can be buildings, structures, objects, sites, or districts significant for their historical or architectural associations. Such properties may be (1) listed in the NRHP, or; (2) eligible for listing in the NRHP through a determination of eligibility, or; (3) possess sufficient significance to be potentially eligible for listing in the NRHP.

The Section 106 review process begins with the identification and evaluation of historic properties that will be affected by, or have the potential to be affected by, a Federal agency undertaking. This task should be conducted in consultation with the SHPO of the state, or states, in which the properties are located. Other state and/or local agencies, organizations, or interested individuals may be consulted to assist in the identification and evaluation process, which uses the

Criteria for Evaluation presented in Section 3.1.4. The next stage of the review process requires the evaluation of the effect, or potential effect, of the undertaking upon historic properties identified and evaluated during the first task. A “determination of effect” decision must be made, resulting in one of the following outcomes:

- No historic properties affected: i.e., here are no historic properties, or historic properties are present but they will not be affected by the undertaking.
- No adverse effect: i.e., the undertaking affects one or more historic properties, but the effect is not adverse.
- Adverse effect: i.e., the undertaking affects one or more historic properties in an adverse manner.

As with the identification and evaluation process, the SHPO and other interested parties should be consulted for their knowledge and expertise in historic properties and effect determinations. The determination of effect utilizes the Criteria for Effect and Adverse Effect presented in Section 3.1.4 of this chapter.

Should it be determined that an adverse effect exists, the Federal agency enters into consultation with the SHPO and other interested parties to develop measures to mitigate the adverse effect. When there is an adverse effect Fort Meade must notify the ACHP according to 36 CFR 800.6. Consultation usually results in a Memorandum of Agreement (MOA), a document signed by all participants that details the responsibilities of the Federal agency and others to avoid or mitigate the proposed undertaking’s adverse effect on historic resources. In a few instances, all parties agree that no measures can be taken that will avoid or mitigate the adverse effect, and so the undertaking is allowed to proceed as planned. However, most projects are amenable to some form of mitigation that helps moderate the adverse effect of the undertaking.

The Historic American Building Survey (HABS) and the Historic American Engineering Record (HAER) are historic property recordation programs administered by the National Park Service (NPS) that are commonly used as mitigation stipulations within MOA’s. These programs record historic properties through the use of archival research, archival photography, and measured drawings. As part of the effort to address adverse effects, Federal agencies often use the programs to record historic properties that would be destroyed or altered to such an extent that the existing appearance and/or context of the properties would be lost. The recordation of a historic property prior to demolition or alteration provides a written and visual record of the qualities that make the property historically or architecturally significant. The NPS submits the resulting HABS/HAER documentation to the Library of Congress for permanent archival storage and for public access for research purposes. The HABS/HAER documentation process has been modified. Now Federal agencies may deal directly with the appropriate SHPOs to determine the required documentation standards. The HABS/HAER documentation is maintained in the SHPO’s office.

There are other mitigation measures available in addition to the HABS/HAER documentation. These include material salvage, public interpretation, or other measures that may be identified during the consultation process.

If the Section 106 consultation process does not prove successful, the Federal agency or another party may end discussions; the agency must then submit appropriate documentation to the ACHP for their written comment. As noted earlier, a Federal agency is mandated under Section 106 to afford the ACHP the opportunity to comment. Moreover, upon receiving comments from the ACHP, an agency must take these comments into account before deciding on a course of action. Section 106 does not mandate that the agency follow the ACHP comments.

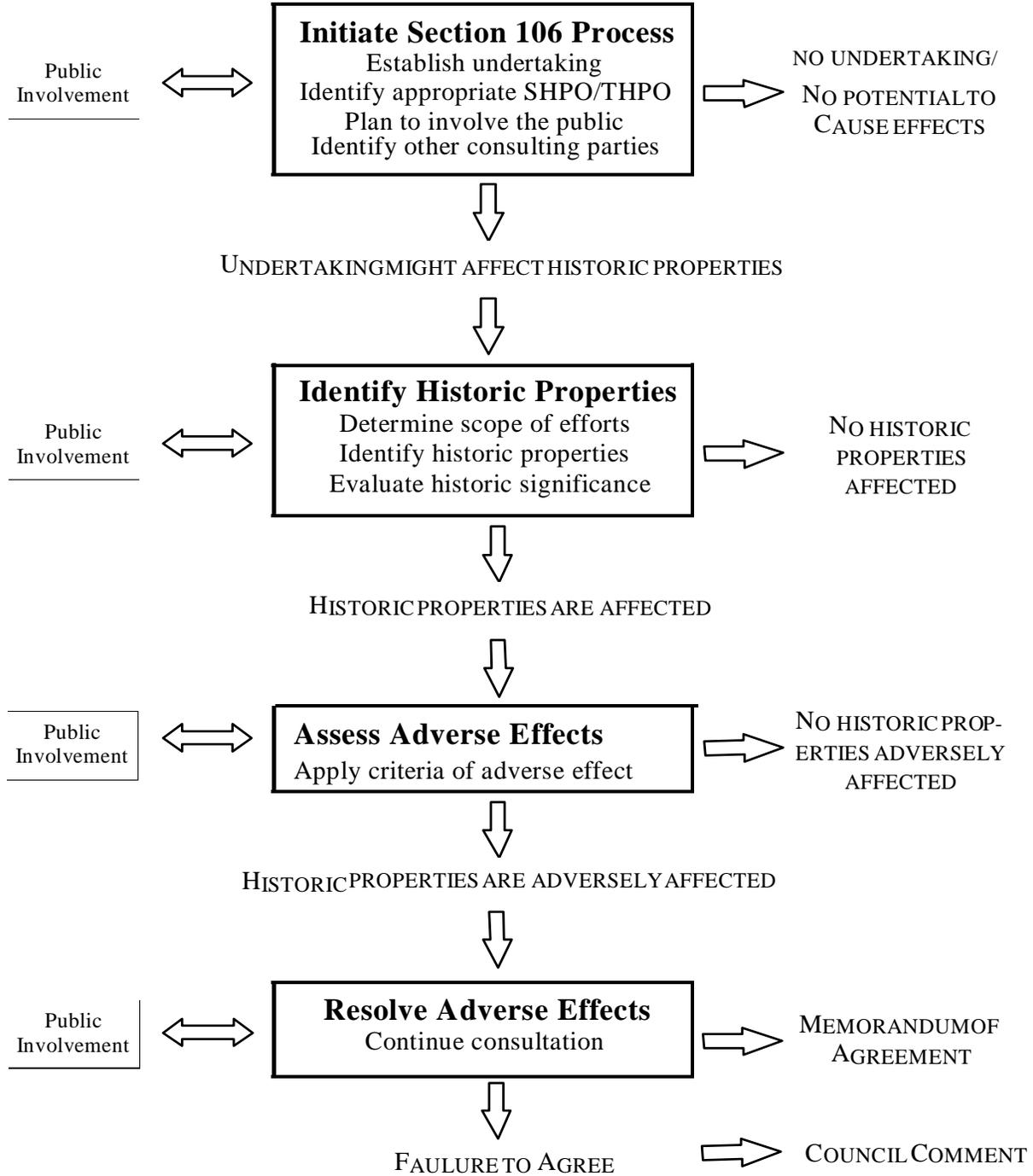
Should the consultation process result in the development of a MOA, the Federal agency must then submit appropriate documentation to the ACHP for comment. The ACHP may have been one of the consulting parties and a signatory to the MOA. Once all of the parties have concurred and have signed the MOA, the Federal agency is bound by the stipulations of the document and must proceed accordingly. Even if the ACHP does not participate as a signatory to the MOA the Federal agency must provide a copy of the MOA to the ACHP for their records.

A MOA is not the only compliance document allowed by Section 106. The regulations also permit Federal agencies to use three other types of documents or agreements to meet the requirements of the Section 106 process:

- A Programmatic Agreement (PA) involving the agency, the ACHP, the SHPO, and other interested parties. Fort Meade and the MHT have developed a PA for the maintenance and repair standards and guidelines of the historic buildings on Fort Meade (Appendix C).
- Agency alternative procedures developed in conjunction with the ACHP, such as the “Army Alternate Procedures.”
- A state-level review system substituted for the Section 106-review process with the approval of the ACHP.

Figure 3-1: The Section 106 Review Process

**The Revised Section 106 Process:
Flow Chart**



3.1.2 Undertaking Requiring Section 106 Review

An “undertaking” is described as “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency; those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state and local regulation....” If historic properties are present, nearly all agency activities require Section 106 review, unless other mechanisms are in place. Essentially any ground-disturbing activity, however slight, should be considered an undertaking. General building maintenance and repairs and new facility construction should also be considered undertakings.

The excessing of lands to another Federal agency involves no impact on cultural resources, for such resources merely become the responsibility of the new cultural resource manager under the NHPA. Before land is excessed to another Federal agency, the receiving agency is required to formally agree to the tenets of this ICRMP or a similar preservation plan by entering into a PA with the Maryland SHPO and the ACHP. Transfer of lands between Federal agencies might impact historic properties if the receiving agency does not comply with the Section 106 process.

The excessing of lands to a non-Federal agency removes the lands from the control and responsibility of the Federal land manager. Prior to such a transaction, an MOA should be developed if cultural resources are located at the facility. If an agreement is reached, the Secretary of the Interior will generally adopt and approve the transferee’s plans. If no MOA is reached, the Secretary will follow the procedures established in accordance with 41 CFR 101-47.308-3, which applies to the transfers of national monuments. Under the regulations, the Secretary may determine that the Federal agency may not excess such lands unless the deed specifies that the new owner will protect and preserve the cultural resources in the same manner as the Federal agency.

According to Fort Meade’s Comprehensive Expansion Master Plan (CEMP), there are several undertakings at Fort Meade planned over the next five years. The following actions are presented in the CEMP in Table 8-1 for construction between 2007 and 2011:

2007

- Relocate Golf Course to BRAC site S
- Conference Center/Lodging Facility

2008

- 70 IW Air Unit Headquarters Building

2009

- Band Vehicle Maintenance Shop
- Phase I-AIT Barracks 2009

2010

- Education Center
- Maryland National Guard Headquarters/P&F Complex
- NSA Exclusive Use Area Expansion
- 902nd Military Intelligence Brigade Headquarters¹

2011

- DOIM Relocation to BRAC site J
- Consolidated Storage Facility
- Army Community Services Building
- Drug Abuse Center
- SCES Relocation to BRAC site M²
- BRAC Site “F” Development²

¹ The CEMP named the relocation of the 902nd Military Intelligence Brigade Headquarters as a potential 2005 action; however, this action has not yet taken place and is more likely to occur in the 2010 timeframe.

² Additional information on construction and demolition activities proposed for BRAC Sites “M” and “F” is provided in the CEMP.

Currently, Ft. Meade is considering the renovation of a historic structure for the relocation of DOIM. If Ft. Meade decides to pursue this alternative, this action will be coordinated with the SHPO. Therefore, no adverse impacts to historic properties are expected.

The 902nd Military Intelligence Brigade currently occupies three brick buildings constructed as Army barracks in 1929 and 1940. Upon the relocation of the 902nd to a new facility, any construction related activities associated with the reuse of these buildings will be coordinated with the SHPO. Therefore, no adverse impacts to historic properties are expected.

The remaining projects listed above are not expected to impact historic properties as they will not require construction or demolition within the Historic District. The Ft. Meade Concept Plan, as discussed in the CEMP, retains existing historic structures and does not include any area within the Historic District as Buildable Areas. New construction in proximity to historic buildings will be consistent with existing architectural styles and in accordance with the Installation Design Guide and the State Historic Preservation Office.

Additional projects are proposed for BRAC sites “F”, “J”, “M”, and “T”. Because these sites are not within Ft. Meade’s Historic District, no impacts to historic properties are expected as a result of demolition and construction within these sites.

In November 2002, Fort Meade entered into a Programmatic Agreement (PA) with the MD SHPO regarding operation, maintenance, repair, and rehabilitation activities occurring in the Fort Meade National Register-eligible Historic District (Appendix C). The stipulations of the PA require Fort Meade to perform the above-mentioned activities in accordance with the 1999 Fort George G. Meade Historic District Guidelines (FGGM Guidelines) and Section 110 of the National Historic Preservation Act. Each year, Fort Meade notifies the MD SHPO of all undertakings in the Historic District that were performed in accordance with the FGGM Guidelines, and the MD SHPO reviews the undertakings to confirm compliance with the FGGM Guidelines and the stipulations of the PA. The PA also requires Fort Meade to conduct rehabilitation activities in accordance with the FGGM Guidelines. Fort Meade provides an opportunity for the MD SHPO to comment on the plans, and allows other interested parties and the general public to inspect the rehabilitation plans.

Undertakings in the Historic District that cannot be conducted according to the FGGM Guidelines follow the normal Section 106 consultation procedures. Every five years, the Fort

Meade Cultural Resources Manager conducts an inspection of the structures within the Historic District, and maintains a record of those inspections.

3.1.3 Standard Operating Procedures for Cultural Resources Management

The DPW-ED manages the cultural resources management program at Fort Meade. This office is responsible for coordinating Section 106 review with any undertakings involving cultural resources at Fort Meade. The primary point of contact for this is Mr. Joe DiGiovanni, at (310) 677-9855. Any questions involving cultural resources management should be directed to Mr. DiGiovanni.

The following outline delineates the four steps of the Section 106 review process and is intended to serve as a reference guide for installation cultural resource managers. The identification and evaluation of cultural resources (Step 2 below) has commenced with the formulation of this ICRMP (see chapter 2.0), and previous fieldwork and evaluation.

Since the completion of the last Fort Meade ICRMP, the Section 106 regulations have been revised. The revised regulations went in to effect on 5 August 2004. A discussion of the revisions to the regulation and a copy of the new regulation are included in Appendix F. The Section 106 review process described below is based on 36 CFR 800 in effect as of 5 August 2004. The revised regulations allow for three options for conducting Section 106 consultation. The following Standard Operating Procedures are based on the standard regulation. The consultation process should also be integrated into other compliance processes, such as the National Environmental Policy Act. The Army has developed alternative procedures for Section 106 compliance (“Army Alternate Procedures”) that went in to effect in March of 2002, and were revised in April of 2004. Fort Meade has elected not to follow the alternative procedures and has decided to continue with the traditional Section 106 review process.

The Cultural Resources Manager (CRM) is designated as the POC for the Section 106 process undertaken at Fort Meade, including those projects proposed by tenant organizations that are subject to Section 106 review. The Section 106 process must be completed for undertakings that affect historic properties prior to starting work. Initiating the Section 106 process in a project’s early planning stages allows the fullest range of options to minimize or mitigate any adverse effects on historic properties.

Historic properties currently identified at Fort Meade include the NRHP eligible Fort Meade Historic District, and the water treatment plant, Building 8698. Three bridges constructed by German POW labor during WWII are also recommended as being eligible for listing in the NRHP. At this point, no Native American tribal lands or traditional cultural properties have been identified at Fort Meade. All of the known prehistoric archaeological sites on Fort Meade have been evaluated for NRHP eligibility. Only one site, 18AN1240, was found eligible for listing in the NRHP.

Fort Meade is responsible for initiating the Section 106 process. Consultation is undertaken among the agency official (in this case an official at Fort Meade with approval authority, per 36 CFR 800.2(a)), the SHPO, and consulting parties. Consulting parties include those individuals or organizations with an interest in the effects of undertakings on historic properties. Section 36

CFR 800.2(c) identifies those parties having a consultative role in the Section 106 process. The ACHP may also be a participant in the consultation process if the criteria defined in Appendix A of 36 CFR 800 are met. Under the revised regulation, SHPOs have been assigned key roles in Section 106 consultation. Consultation at Fort Meade will be conducted with the Maryland Historical Trust, the designated SHPO office. This agency maintains a full-time staff to assist agencies in consultation. The SHPO is required to respond to requests for review within 30 days after receiving appropriate documentation.

The procedure set forth below defines how Fort Meade meets the Section 106 statutory requirements based on the standard regulations at 36 CFR 800. The Section 106 process consists of four primary steps:

- Step 1: Initiate Section 106 Process
- Step 2: Identify Historic Properties
- Step 3: Assess Adverse Effects
- Step 4: Resolve Adverse Effects

Procedure

Step 1: Initiate Section 106 Process

1. *Establish undertaking.* The CRM will determine whether the proposed action or activity meets the definition of an “undertaking” (Section 800.16[y]) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties. Installation personnel, tenant organizations, and agents must consult with the CRM to determine whether a proposed action constitutes an undertaking. An undertaking will have an effect on a historic property when the action has the potential to result in changes to the character or use of the historic property within the area of potential effects. Undertakings involving operation, maintenance, repair, and rehabilitation activities occurring in the Fort Meade National Register-eligible Historic District that are covered under Fort Meade’s PA with the MD SHPO (see Appendix C) require compliance with the procedures in the PA.
 - 1(a). *No potential to cause effects.* If the proposed action does not have the potential to cause effects on historic properties, the CRM has no further obligations under Section 106 and the action may proceed. CRM should document this decision for internal information.
 - 1(b). *Potential to cause effects.* The undertaking is determined to have the potential to cause effects on historic properties. Go to 2.
2. *Coordinate with other reviews.* The CRM coordinates the Section 106 review, as appropriate, with the installation planning schedule and with any other required reviews (i.e., NEPA, Native American Graves Protection and Repatriation Act (NAGPRA)). The CRM may use information from other review documents to meet Section 106 requirements.

3. *Identify the appropriate SHPO.* The CRM will determine the appropriate SHPO for consultation during the planning process. For undertakings at Fort Meade, this will be the MHT.
4. *Plan for public involvement.* In consultation with the SHPO, the CRM will plan for involving the public in the Section 106 process, as appropriate.
5. *Identify other consulting parties.* In consultation with the SHPO, the CRM shall identify any other parties entitled to be consulting parties, including local government or applicants, and consider all written requests of individuals and organizations to determine which entities should be consulting parties.

Step 2: Identify Historic Properties

6. *Determine scope of identification efforts and identify historic properties.* The CRM, in consultation with the SHPO, will determine and document the area of potential effects of the undertaking and review the existing historic property inventory to determine whether or not historic properties are located within the proposed area(s) of effect. The CRM may also seek information from consulting parties, as appropriate. Select option 6(a) or 6(b).
 - 6(a). *No historic properties affected.* The CRM determines that there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them. The CRM provides documentation of this finding, as set forth in 36 CFR 800.11(d), to the SHPO. The CRM also notifies all consulting parties of the decision and makes the documentation available to the public. Select option 6(a)1 or 6(a)2.
 - 6(a)1. If SHPO does not object within 30 days of receipt of an adequately documented finding, Fort Meade's responsibilities under Section 106 are fulfilled. The action may proceed.
 - 6(a)2. SHPO disagrees with Fort Meade's determination and the proposed undertaking is considered to have an "effect" on historic properties. Continue consultation with SHPO to resolve disagreement, or forward supporting documentation to ACHP for review, and take into account their opinion before proceeding. Provide rationale for decision to all parties. The action may proceed.
 - 6(b). *Historic properties affected.* The CRM determines that historic properties will be affected by undertaking. Go to 7.

Step 3: Assess Adverse Effects

7. *Apply criteria of adverse effect.* The CRM, in consultation with the SHPO and consulting parties, assesses the effect(s) of the proposed undertaking on historic properties following the

criteria of adverse effect outlined in 36 CFR 800.5 and in DA PAM 200-4, Appendix B. Select option 7(a) or 7(b).

- 7(a). *Finding of no adverse effect.* The CRM, in consultation with the SHPO, determines that the proposed undertaking does not meet the criteria of adverse effect (36 CFR 800.5(a)(1)) and, therefore, will have no adverse effect on historic properties. A finding of no adverse effect also may result if the undertaking is modified or conditions are imposed, such as subsequent review of plans for rehabilitation by the SHPO, to ensure consistency with the *Secretary's Standards for the Treatment of Historic Properties* (36 CFR 68), to avoid adverse effects.

The CRM documents the finding of no adverse effect following standards set forth in 36 CFR 800.11(e). The CRM notifies the SHPO and all consulting parties of the finding and provides them with the documentation. The SHPO must respond to the finding within 30 days. Select option 7(a)1 or 7(a)2.

- 7(a)1. *Agreement with finding.* If the ACHP is not involved in the review process, the action may proceed if the SHPO agrees with the finding. Failure of the SHPO to respond within 30 days from receipt of documentation shall be considered agreement of the SHPO with the finding.

- 7(a)2. *Disagreement with finding.* If the SHPO or any consulting party disagrees with Fort Meade's determination within the 30-day review period, it responds in writing and specifies the reasons for disagreeing with the finding. The CRM can either consult with the party to resolve disagreement or request ACHP to review the decision. Provide supporting documentation to ACHP for review, and take into account their opinion before proceeding. Provide rationale for decision to all parties. The action may proceed.

- 7(b). *Finding of adverse effect.* If it is determined that the proposed undertaking will have an adverse effect on historic properties, the CRM will consult further to resolve the adverse effect. When there is a finding of adverse effect the CRM must notify the ACHP according to 36 CFR 800.6. Go to 8.

Step 4: Resolve Adverse Effects

8. *Continue consultation.* The CRM continues consultation with the SHPO and consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects to historic properties. The CRM must submit documentation specified in 36 CFR 800.11(e) to the ACHP to notify them of the adverse effect finding. Fort Meade can request the ACHP to participate in the consultation or the ACHP can decide to enter consultation proceedings based on criteria in 36 CFR 800, Appendix A. The ACHP has 15 days to notify the CRM and consulting parties whether it will participate in adverse effect resolution.

In addition to the consulting parties identified under 36 CFR 800.3(f), other individuals and organizations can be invited to become consulting parties. The CRM makes information available to the public, including the documentation specified in 36 CFR 800.11(e), and provides an opportunity for comment about resolving the adverse effects of the proposed undertaking. Select option 8(a) or 8(b).

- 8(a). *Resolve adverse effect – resolution without ACHP.* Fort Meade, the SHPO, and consulting parties agree on how the adverse effects will be resolved and execute a MOA. The CRM must submit a copy of the executed MOA, along with the documentation specified in 36 CFR 800.11(f), to the Council prior to approving the undertaking to meet the requirements of Section 106. Go to 9.
- 8(b). *Resolution with ACHP participation.* If consultations between Fort Meade and the SHPO fail to result in a MOA, Fort Meade will request ACHP participation and provide them with documentation specified in 36 CFR 800.11(g). If the ACHP joins the consultation, Fort Meade will proceed with consultations in accordance with 36 CFR 800.6(b)2 to reach an MOA. If the ACHP decides not to join consultations, the Council will notify Fort Meade and proceed to comment. Go to 11.
9. *Memorandum of Agreement.* The ACHP receives the MOA for filing. Fort Meade has discharged its compliance responsibilities under Section 106. The proposed undertaking can proceed, according to any MOA stipulations.
10. *Failure to resolve adverse effect – termination of consultation.* Fort Meade, the SHPO, or the ACHP determines that further consultation will not be productive and terminates consultation by notifying all consulting parties in writing and specifying reasons for termination. Select 10(a), 10(b), or 10(c).
 - 10(a). If Fort Meade terminates consultation, Fort Meade requests ACHP comment pursuant to 36 CFR 800.7(c) and notifies all consulting parties of request. Go to 11.
 - 10(b). If the SHPO terminates consultation, Fort Meade and the ACHP may execute a MOA. Fort Meade may then proceed with undertaking according to any stipulations in the MOA.
 - 10(c). If the ACHP terminates consultation, the ACHP notifies Fort Meade, the Army's Federal Preservation Officer (FPO), and consulting parties and provides comments to FPO under 36 CFR 800.7(c). Go to 11.
11. *Comments by the ACHP.* The ACHP has 45 days after receipt of request to provide comments. The ACHP will allow an opportunity for Fort Meade, consulting parties, and the general public to provide their views. The ACHP will provide its comments to the head of the agency with copies to Fort Meade, the Army FPO, and all consulting parties. Select 11(a) or 11(b).

- 11(a). The head of the agency takes into account the ACHP comments and Fort Meade implements the ACHP comments. Project may proceed.
- 11(b). The head of agency takes into account the ACHP comments and Fort Meade does not implement the ACHP comments. The head of the agency shall document the final decision in accordance with 36 CFR 800.7(c)(4). All consulting parties are notified of decision. Project may proceed.

Proceed

Once a signed MOA or ACHP comment has been received, Fort Meade can, subject to the terms of any agreement that has been reached, proceed. This is the conclusion of the Section 106 compliance process. All documentation and correspondence regarding the process should be kept on file by the CRM.

3.1.4 Criteria for Determining Significance and Effects

The following Federal regulations, 36 CFR 60.4 (NRHP Criteria for Evaluation) and 36 CFR 800.5 (Assessment of Adverse Effects), provide a framework to assess a resource's significance and an undertaking's effect. For the most part, the Criteria of Evaluation is only applied to resources that are 50 years or older. Fort Meade contains above ground resources more than 50 years old that are historically significant, as well as one archeological site that is NRHP eligible.

36 CFR 60.4 reads as follows:

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, material, workmanship, feeling, and association and

- (A) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (B) that are associated with the lives of persons significant in our past; or
- (C) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (D) that have yielded, or may be likely to yield, information important in prehistory or history.

Criteria Considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations; reconstructed historic buildings; properties primarily commemorative in nature; and properties that have achieved significance within the past 50

years shall not be considered eligible for the NRHP. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- (a) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- (b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- (c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or
- (d) A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- (e) A reconstructed building, when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- (g) A property achieving significance within the past 50 years if it is of exceptional importance.

36 CFR 800.5 reads as follows:

- (a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the NRHP. For the purpose of determining effect, alteration to features of the property's location, setting, or use may be relevant depending on a property's significant characteristics.
- (b) An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:
 - (1) Physical destruction, damage, or alteration of all or part of the property;
 - (2) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision

for handicap access that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 Part 68) and applicable guidelines;

- (3) removal of a property from its historic location;
 - (4) change of the character of the property's use or of physical features within the property's setting that contribute to its historical significance;
 - (5) introduction of visual, atmospheric, or audible elements that diminish the integrity of a property's significant historic features;
 - (6) neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or a Native Hawaiian organization, and;
 - (7) transfer, lease, or sale of a property out of Federal ownership or control without adequate legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.
- (c) An undertaking is considered to have no adverse effect when the undertaking does not meet the criteria of adverse effect as defined in the ACHP regulations, or the undertaking is modified or conditions are imposed to ensure consistency with the Secretary's Standards for Treatment of Historic Properties.

3.1.5 Procedures for the Treatment of Both Known and Predicted Properties

Standards pertaining to the treatment of historic architectural and archeological resources located on Fort Meade are taken from the following:

- The proposed guidelines of the Department of the Interior, National Park Service, entitled "36 CFR Part 66: Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements," (1977)
- Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites, Advisory Council on Historic Preservation, (1999)
- The Department of the Army, Army Regulation 200-4 (Cultural Resources Management).

These guidelines were developed to standardize the treatment of resources within and among Federal lands and installations. The primary standard is the cultural resource's eligibility for listing in the NRHP.

Department of the Army regulations state that the significance of all historic architectural and archeological resources must be weighed against other public considerations and the mission of the military. Once the significance has been determined, the treatment options are avoidance, protection, or mitigation.

3.1.6 Archeological Procedures

Several protection measures for archeological resources are available:

- **Avoidance** – In most cases, projects proposed in areas containing a significant cultural resource can be adjusted to avoid impact to that resource. Projects such as construction of installation facilities can usually be designed to avoid areas of significant cultural resources when these areas are defined before or during the initial project design stage.
- **Physical Protection** – If it is necessary to disturb or construct in an area containing significant cultural resources, it is usually possible to protect these resources from inadvertent impact by installing temporary fencing or even by marking off the area with fluorescent flagging tape. These methods, in conjunction with verbal instructions to those involved with the project, are usually sufficient to protect the sites from impact. Inclusion of specifications in the contract concerning protection measures the contractor must follow during construction activities would further enhance the contractor's awareness of such stipulations.
- **Monitoring** – Significant cultural resources that have been avoided or that have been physically protected need periodic monitoring to assess the effectiveness of the protection measures. If it is determined during construction that avoidance is impossible or that the physical barriers placed around the site are insufficient, other protective means may be necessary. In extreme cases, monitoring may determine that protection is impossible and mitigation is required. Monitoring during construction is also necessary if the construction is taking place in an area known or suspected to contain important historic or prehistoric resources. Monitoring may also be required during construction in an area where the loss of a portion of a site has been mitigated through archeological data recovery, but the remainder of the site is intact. Monitoring is necessary to ensure that vehicular traffic and construction activities remain within the mitigated area.

Protection of a Valid Sample – Within a defined area, several occupation episodes and types may be represented for both the historic and prehistoric period. There may also be several sites for each represented occupation. Each site should be evaluated for the possibility of intact deposits and for its chronological, functional, and cultural importance in relation to what is already known for the region. Representative sites should be avoided during project planning or physically protected and regularly monitored during major undertakings. A periodic reevaluation of the relative importance of all the sample sites should be conducted regularly as new information is gathered.

The mitigation treatment for archeological resources is data recovery of the site, generally in the form of excavation, when destruction is imminent and unavoidable. Excavation must meet certain Federal standards as outlined in the Secretary of the Interior's "Standards and Guidelines: Archeology and Historic Preservation" (48 FR 44716-4470).

See Appendix B for information concerning archeological documentation and associated procedures.

Historic Architectural Resources

Four mitigation treatments for buildings, structures, and historic districts are recommended:

- Preservation Maintenance – protection through preventive maintenance of existing historic fabric and building elements. This treatment is especially important for individual resources within a historic district.
- Rehabilitation – the alteration or repair of a building to permit an efficient and continued use while maintaining or restoring elements that define the character of the building or are associated with its historic significance.
- Restoration – actions taken to return a building, elements of a building, or a site to an earlier appearance.
- Documentation – a documentary, photographic, and graphic record of the historic property. Buildings and structures are documented according to the guidelines of the NPS Historic American Building Survey/Historic American Engineering Record (HABS/HAER) for deposit in the Library of Congress.

Other examples of mitigation, beyond Army definitions, include the following:

- Limiting the magnitude of the undertaking.
- Modifying the undertaking through redesign, reorientation of construction on the project site, or other similar changes.
- Relocating historic properties.
- Salvaging archeological or architectural information and materials.

3.1.7 Archeological Resource Protection Act (ARPA) Compliance

ARPA requires that permits be issued prior to any excavating or removing of archeological resources on Federal property or on property under Federal control. Acquisition of a permit does not fulfill the requirements of Section 106 review. However, issuance of a permit is not considered an undertaking and does not by itself require Section 106 review.

Upon receipt of an application for a permit to remove an archeological resource, the installation shall determine that—

- The applicant is qualified to carry out the permitted activity.
- The activity is undertaken for the purpose of furthering archeological knowledge in the public interest and for the purpose of Section 106 or 110 compliance.
- The archeological resources that are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archeological records and data will be preserved by a suitable university, museum, or other scientific or educational system.
- The activity pursuant to the permit is not inconsistent with any management plan applicable to the public lands concerned.

The installation commander is considered the federal land manager at Fort Meade. The installation commander shall ensure that military police, installation legal staff, the installation Public Affairs Officer, and the fish, game, and recreation staff are familiar with the ARPA requirements and applicable civil and criminal penalties under the law. In accordance with AR 200-4, ARPA permits for Federally-owned Army property are issued by the USACE Real Estate Office.

Further details on the terms and conditions of the permit are spelled out in ARPA. See Appendix B.

3.1.8 Emergency Procedures for Unexpected Discoveries of Archeological Deposits

Archeological or historical sites occasionally are discovered during construction projects, regardless of whether the project area has been subjected to a complete cultural resource survey and inventory. Ideally, Fort Meade is encouraged to plan for such discoveries. Fort Meade may develop a programmatic agreement to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking. When review of a proposed undertaking suggests that cultural resources are likely to be discovered during the implementation of the undertaking, the responsible Federal agency is encouraged to develop a plan for treatment of such properties and to include this plan in any documentation to the SHPO as part of the effort to assess the effects of the undertaking (36 CFR 800.13). Fort Meade, like other agencies, is not required to stop work on an undertaking in the case of unexpected discoveries. However, the cultural resource manager should make reasonable efforts to avoid or minimize the damage to the property until it has been assessed (36 CFR 800.13).

If archeological resources are discovered, several immediate steps should be taken:

- Initially, Fort Meade should stop work in that locale and make reasonable efforts to protect the artifacts and the site.

- The cultural resource manager should be contacted immediately. Contact Mr. Joe DiGiovanni, (301-677-9855).

A number of options may then be considered:

Option 1

- Contact the Department of the Interior's Departmental Consulting Archeologist (DCA), Archeological Assistance Division, National Park Service, Washington, DC, 20013-7127, (202) 343-4101, and advise them of the nature of the discovery. As much information as is known concerning the cultural resource, such as type, date, location, and size, as well as any information on its eligibility, should be provided to the DCA. The DCA retains the option of notifying and consulting with the ACHP and the SHPO, who may require an on-site examination of the affected property. The DCA will determine the significance of the resource and what mitigation measures to take.
- Comply with provisions governing discoveries in 36 CFR 800.

Option 2

- Immediately prepare a mitigation plan after the cultural resource is discovered. This plan should be sent to the SHPO and the ACHP.
- The ACHP must respond with preliminary comments within 48 hours; final comments are due within 30 days of the special request.

This is the most time-efficient approach because, technically, the construction project does not have to be halted. However, Fort Meade and/or its agents would be expected to make a reasonable attempt to avoid further destruction to the resource until a formal data recovery mitigation plan can be executed.

Option 3

The third option is the Section 106 compliance process. Because this can be a time-consuming procedure, it is not recommended in the case of unexpected discoveries. If this option is chosen, thorough and complete documentation of the proposed impact and subsequent mitigation plan must be completed to ensure the technical adequacy of all actions, as required by the regulations.

3.1.9 Tribal Consultation

Various Federal regulations and Executive Orders require federal agencies to consult with federally recognized American Indian tribes. It is the goal of the consultation process to identify both the resource management concerns and the strategies for addressing them through an interactive dialogue with appropriate American Indian communities. Appendix D contains a plan

for Fort Meade to conduct consultation with Native American tribes, and a list of Federally-recognized tribes with aboriginal homelands in the Fort Meade area.

3.1.10 Discovery of Native American Human Remains or Associated Objects

If the unexpected discovery consists of, or may consist of, Native American human remains or associated funerary objects, **stop work immediately**. Fort Meade will be subject to compliance with the Native American Graves Protection and Repatriation Act (NAGPRA), specifically Section 3 (d), "Inadvertent Discovery of Native American Remains and Objects." Fort Meade should contact the Army FPO and the appropriate Native American group for consultation (see NAGPRA guidelines).

3.1.11 Disposition of Human Remains

Any discovery and/or disturbance of human remains is a sensitive issue that Fort Meade must address with care. There are a total of nine known cemeteries at Fort Meade (eight civilian and one military); seven of the cemeteries are recorded as historic archeological sites. It is possible that human remains could be encountered accidentally if an unmarked grave or cemetery is discovered by construction. Also, in certain instances, it may not be possible to avoid a marked cemetery, in which case the cemetery must be relocated. The following guidelines should be followed in both cases to ensure sensitive, respectful treatment of remains, funerary items, and related artifacts.

Fort Meade may be subject to State regulations governing the archeological removal of human remains. Current regulations and instructions are unclear about the responsibility of Federal agencies in regards to this action, and some clarification is required. The Annotated Code of Maryland, Sections 265 and 267, allow for criminal prosecution for the unauthorized removal of human remains or associated funerary objects. It is highly recommended that Fort Meade closely coordinate the removal of any remains with the Army's Judge Advocate's office, the National Park Service's Departmental Consulting Archeologist, and the SHPO. The procedures that follow incorporate Section 106 review and recommend that Fort Meade follow permitting procedures. Fort Meade should plan for this process accordingly. If the remains are Native American, Fort Meade must comply with NAGPRA.

Planned Burial Disturbance

1. If a proposed undertaking involves marked or previously recorded burials, Fort Meade must initiate Section 106 consultation. Project review should occur early in the planning process. In addition to Section 106 review, the SHPO may require Fort Meade to submit a permit application to comply with State law and regulations governing the removal of human remains.
2. Fort Meade must make every reasonable effort to identify and locate individuals or Native American groups who can demonstrate direct kinship with the interred individuals. If such people are located, Fort Meade should consult with them in a timely manner to determine the most appropriate treatment of the recovered bodies.

3. If the remains are associated with a federally recognized existing Native American group, then the provisions of NAGPRA will apply. This act provides for the protection of Native American, Native Alaskan, and Native Hawaiian remains and funerary objects that are discovered on Federal lands. Consultation is required to determine custody (or disposition) of human remains. Provisions for intentional excavations and procedures to be followed are set out in NAGPRA 43 CFR Part 10.3 (c-d).
4. If Fort Meade cannot adequately determine or identify a specific Native American group or other ethnic group, Fort Meade will make a reasonable effort to locate and notify group(s) who may have a legitimate interest in the disposition of the remains based on a determination of general cultural affinity by a recognized professional. Contact the Department the Interior's Department Consulting Archeologist (DCA), Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, (202) 343-4101, and advise of the nature of the disposition.
5. Fort Meade or its agents will treat all discovered human remains with dignity and respect. Any costs that accrue as a result of consultation, treatment, curation, etc., will be the responsibility of Fort Meade.

Unexpected Discovery of Human Remains

1. Immediately stop any excavations that discover human remains and make reasonable efforts to protect the burials and the site.
2. Notify the installation commanding officer and the cultural resource manager immediately following the discovery. Contact Fort Meade Military Police and determine the origin of the discovery.
3. Contact the Department of the Interior's Departmental Consulting Archeologist (DCA), Archeological Assistance Division, National Park Service, P. O. Box 37127, Washington, DC 20013-7127, (202) 343-4101, and advise of the nature of the discovery. Provide the DCA all known information concerning the cultural resource, such as resource type, date, location, and size, as well as any information on its eligibility. The DCA retains the option of notifying and consulting with the ACHP and the SHPO, who may require an on-site examination of the affected remains. The DCA will determine the significance and origins of the remains and what mitigation measures to take.
4. If Fort Meade has reason to know that it has discovered Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, Fort Meade must provide immediate telephone notification of the nature of the discovery to the installation commander, with written discoverer's confirmation of notification (DCON) to the commander, to the Departmental Consulting Archeologist, installation commander, Army FPO, and Army Headquarters. Provide written notification by certified mail.

5. If the remains are of Native American origin, the Commander should:
 - (a) Take immediate steps, if necessary, to further secure and protect the discovered site, providing appropriate stabilization or covering.
 - (b) Immediately certify receipt of notification by the discoverer.
 - (c) Notify by telephone, and follow with written confirmation, the appropriate federally recognized tribes no later than 3 days after certification of the discovery, and the commander must certify in writing that he has received the DCON. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony, their condition, and the circumstances of their discovery.

3.1.12 Storage of Archeological Artifacts

Archeological collections include the artifacts recovered from archeological sites, the documentary records pertaining to the excavations, and the final report. These records may include photographs, field data records and drawings, maps, and other documentation during the conduct of a project. Artifacts should be curated in accordance with 36 CFR 79, *The Curation of Federally-Owned and Administered Archeological Collections*.

Copies of all final Phase I and Phase II archeological reports were submitted to the Maryland State Highway Administration, the MHT, and the Maryland Archaeological Conservancy (MAC) Laboratory at the Jefferson Patterson Park in Calvert County.

All artifacts collected from the archeological investigations at Fort Meade are curated at the MAC Laboratory under a contract between the MAC Laboratory and the US Army Medical Research Acquisition Activity, Fort Detrick, Maryland.

3.1.13 National Environmental Policy Act (NEPA) Compliance

Under NEPA, Federal agencies are responsible for considering the effects their actions may have on the environment, including cultural resources. The intention of NEPA regarding cultural resources is similar to NHPA, but Federal agencies must realize that compliance with one statute does not constitute compliance with the other. However, agencies may coordinate studies and documents conducted in accordance with Section 106 with those completed under NEPA. Coordination of Section 106 compliance and NEPA can be accomplished in the following manner:

- Identify and evaluate cultural resources and determine whether a project has a potential effect on them while preparing NEPA documents. Consult the installation's cultural resource manager for determination of effect.
- Installation cultural resource manager determines effect and decides whether Section 106 review is necessary.

- Use the draft environmental impact statement (EIS) or environmental assessment (EA) as the basis for NEPA consultation and/or Section 106 coordination.
- Include the results of the consultation, the MOA or ACHP comments, in the final NEPA report.

3.1.14 Native American Graves Protection and Repatriation Act (NAGPRA) Compliance

This law, enacted in 1990, governs the repatriation and protection of Native American (American Indian, Inuit, and Hawaiian native) remains, associated and unassociated funerary objects, sacred objects, and objects of “cultural patrimony” on lands controlled or owned by the United States. The Act deals with existing collections, intentional excavations, inadvertent discoveries, and illegal trafficking of human remains and certain cultural items.

Existing Collections

NAGPRA requires Federal agencies and federally funded museums to identify the cultural affiliation of human remains and certain cultural items in their possession or control and to notify the Indian tribes, including Alaska Native and regional and village corporations, Native Hawaiian organizations, and/or closest lineal descendants likely to be affiliated with the human remains and cultural items. Further, it calls for these remains and cultural items to be made available for return to the respective Native groups or closest lineal descendants, if they so request.

- Fort Meade currently has no tribal or human remains, funerary objects, sacred objects or objects of cultural patrimony in its possession.
- However, future projects should consider the need for compliance with NAGPRA in the case that any Native American artifacts are discovered inadvertently. If future investigations reveal the possibility of Native American sites being discovered, Fort Meade is encouraged to prepare a mitigation plan.
- The summary, inventory, and repatriation of human remains and cultural items defined in NAGPRA shall occur in accordance with NAGPRA 43 CFR Part 10.5-10.7.

Intentional Excavations and Inadvertent Discoveries

Consultation is required under NAGPRA to determine cultural affiliation of human remains and specific cultural items that derive from intentional excavations and inadvertent discoveries on Federal or tribal lands. In addition, consultation is required to determine custody (or disposition) of human remains and certain cultural items recovered from Federal lands. In cases of intentional excavation or inadvertent discovery of human remains and cultural items on Federal lands, the procedures set out in 43 CFR Part 10.3(c-d) shall be followed. Figure 3-2 presents a diagram of the NAGPRA process.

3.1.15 American Indian Religious Freedom Act (AIRFA) Compliance

AIRFA promotes coordination with Native American religious practitioners regarding effects of Federal undertakings upon their religious practices. Undertakings alter or affect flora, fauna, viewsheds, artifacts, and sites that may be important to Native Americans. For more information, contact the Army Environmental Center at Aberdeen Proving Ground.

3.1.16 Section 110 of the National Historic Preservation Act Compliance

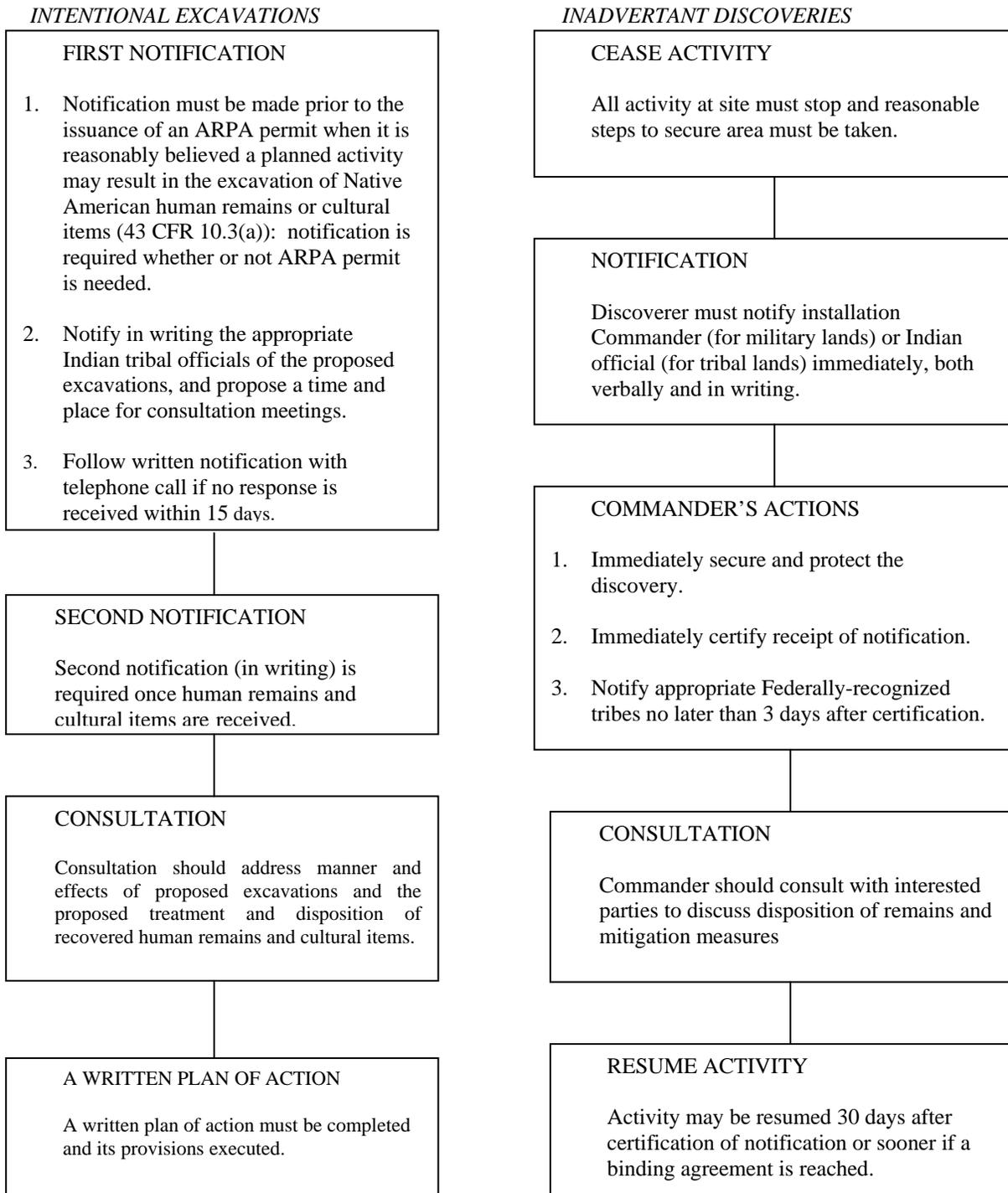
Section 110 of the NHPA mandates Federal agency responsibility for the preservation of historic properties under their ownership or control. Federal agencies are directed to utilize and preserve historic properties when they are available. In complying with Section 110 of the NHPA, Fort Meade should do the following:

- Inventory, evaluate and nominate historic properties to the NRHP, and maintain these properties to preserve their historic features.
- Consider the preservation of historic properties in the planning process.
- Consult with outside parties that are involved with historic preservation planning activities.
- Comply with the regulatory requirements of Section 106 of the NHPA and with NAGPRA and NEPA.
- Prepare appropriate HABS/HAER documentation prior to the substantial alteration or demolition of historic properties.
- Consult with the Secretary of the Interior prior to the transfer of historic properties to ensure that the transfer plans ensure their preservation or enhancement.
- Do not grant a permit or license or any form of assistance to an applicant who indicates intent to avoid the Section 106 process, and who would intentionally adversely affect a historic property.
- Recognize that the Federal agency (in this case, the installation) is ultimately responsible for Section 106 compliance.

3.1.17 Section 111 of the National Historic Preservation Act Compliance

Section 111 of the NHPA directs Federal agencies to consider alternatives for historic properties under their control. This may include adaptive reuse, or the lease or exchange of a historic property to a person or organization if this action will ensure the preservation of the historic property. Fort Meade should use the proceeds of any such lease to defray the cost of maintenance, repair, and any other costs on historic properties. Fort Meade may enter into a contract with an outside agency for the management of a historic property. Prior to conducting any of these activities, Fort Meade should consult with the ACHP.

Figure 3-2: Diagram of Native American Graves Protection and Repatriation Act (NAGPRA) Process



4.0 REFERENCES

Advisory Council on Historic Preservation. *Introduction to Federal Projects and Historic Preservation Law*, General Services Administration, Interagency Training Center, Washington, DC, 1995.

Advisory Council on Historic Preservation. *Part 800—Protection of Historic Properties*, Federal Register, Government Printing Office, Washington, DC, 2004.

Basye, Katherine, “*Essential if Regimental Esprit is to be Developed*” *Army Family Housing at Fort George G. Meade, Maryland*. Masters Thesis, George Washington University, 1999.

Fort George G. Meade Museum Office.

Goodwin, R. Christopher and Associates. *Letter Report on NIKE Missile Sites and National Register Nomination for the World War I Barracks Historic District, Final Report*. Atlantic Division, Naval Facilities Engineering Command, Norfolk, Virginia, 1994.

Goodwin, R. Christopher and Associates. *Fort George G. Meade Cultural Resource Management Plan*. U.S. Army Corps of Engineers, Baltimore District, 1994.

Goodwin, R. Christopher and Associates. *Phase I Archeological Survey of Approximately 2,210 Acres at Fort George G. Meade, Anne Arundel County, Maryland (Technical Appendix to the Fort Meade Cultural Resource Management Plan)*. U.S. Army Corps of Engineers, Baltimore District, 1995.

Goodwin, R. Christopher and Associates. *Fort George G. Meade Phase II Architectural Summary Report*. U.S. Army Corps of Engineers, Baltimore District, 1996.

Krammer, Arnold. *Nazi Prisoners of War in America*. Stein and Day, New York, 1979.

R & K Engineering, Inc. *Comprehensive Expansion Master Plan for Fort George G. Meade, MD*. Fort George G. Meade, 2005.

Shaffer, Gary and Elizabeth Cole. *Standards and Guidelines for Archaeological Investigations in Maryland*. Maryland Historical Trust, 1994

URS Group, Inc, *Fort Meade, Phase II Archaeological Evaluation of Sites 18AN974, 18AN986, & 18AN987, Anne Arundel County, Maryland*. Fort George G. Meade, 2002.

URS Group Inc., *Fort Meade, Phase II Archaeological Evaluation of Sites 18AN762, 18AN975, & 18AN978, Anne Arundel County, Maryland*. Fort George G. Meade, 2003a.

URS Group Inc., *Phase IB Archaeological Survey of A 50-Acre Portion of the Berman Tract and Phase II Evaluation of Site 18AN577, Fort George G. Meade, Anne Arundel County, Maryland*. Fort George G. Meade, 2003b.

URS Group Inc., *Fort Meade, Phase II Archaeological Evaluation of Sites 18AN398, 18AN929, 18AN982, 18AN983, 18AN988, & 18AN989, Anne Arundel County, Maryland.* Fort George G. Meade, 2003c.

URS Group Inc., *A Cultural Resources Study of Eight Archaeological Sites at Fort George G. Meade, Anne Arundel County, Maryland.* Fort George G. Meade, 2004.

U.S. Army Corps of Engineers, Baltimore District. *Final: Supplementary Phase I Archeological Investigation Fort George G. Meade, Anne Arundel County, Maryland.* U.S. Army Corps of Engineers, Baltimore District, 1998.

Versar. *Geophysical Survey of Possible Dump Sites and an Abandoned Cemetery, Fort George G. Meade, Maryland.* Environmental Management Office, Directorate of Public Works, Fort George G. Meade, 2004.

APPENDIX A

PHYSICAL OVERVIEW AND HISTORIC BACKGROUND

APPENDIX A

FORT GEORGE G. MEADE

PHYSICAL OVERVIEW AND HISTORIC BACKGROUND

The 1994 Fort George G. Meade (Fort Meade) Cultural Resources Management Plan contains a comprehensive discussion of prehistoric and historic contexts at Fort Meade. That document should be retained. Rather than repeating that information, this appendix will summarize that information and include a discussion of the post-World War II development of Fort Meade until 1960.

PHYSICAL OVERVIEW

Topography and Hydrology

Fort Meade is located in the Little Patuxent drainage of the Atlantic Coastal Plain Physiographic Province. Fort Meade is located in northern Anne Arundel County. Fort Meade's topography is almost level to gently rolling. Slopes exceeding ten percent are rare and occur primarily in pockets in the central and north-central parts of the installation along stream corridors. The average elevation on post is between 140 to 180 feet mean sea level.

Burba Lake, also known as Kelly Pool, is located in the south-central portion of the installation. The Franklin Branch drains into the lake and continues on, eventually draining into the Little Patuxent River. There are also several intermittent streams on the installation that drain into the Little Patuxent River.

Geology and Soils

There are 39 known soil types on Fort Meade. Most of the soils are part of the Evesboro complex. These soils are very deep, excessively drained, sandy loam upland soils. Fort Meade is underlain by a wedge-shaped mass of unconsolidated sediments that thickens to the southeast. The sediments overlay crystalline rock of Precambrian to early Cambrian age.

Vegetation

Previous development at Fort Meade has been extensive, and few areas retain their native vegetation. Currently there are approximately 1,300 acres of woodlands on Fort Meade. Preservation of the remaining wooded areas is one of Fort Meade's goals. There are no agricultural operations on, or adjacent to, Fort Meade.

HISTORICAL BACKGROUND

Historic contexts are organizational frameworks that describe patterns or trends in history by which a specific event, resource, or site is understood. Contexts are useful in evaluating the relative significance of cultural resources within the broader framework of American history.

The National Register Criteria for Evaluation (36 CFR 60) are the standards used to evaluate the significance of a cultural resource within its appropriate context. National Register eligibility is based on a property's historic associations, architectural or engineering values, or information potential. The National Register lists districts, sites, structures, objects and buildings significant in American history. Properties listed in the National Register are significant on a local, state, or national level. This plan is designed to integrate those resources listed in, or eligible for listing in, the National Register into Fort Meade's current management procedures.

Prehistoric Context

The majority of the prehistoric background information was obtained from the 1994 Fort George G. Meade Cultural Resource Management Plan. A variety of archeological investigations have been conducted on prehistoric sites in Anne Arundel County. There are numerous significant prehistoric sites located in Anne Arundel County. There are five prehistoric or historic archeological sites in the county that are listed in the National Register of Historic Places. There is one prehistoric site on Fort Meade that has been determined eligible for listing in the NRHP.

Paleo-Indian Period (ca. 12,000 B.C. to 6,500 B.C.) The chronology of the Paleo-Indian period varies. The beginning of the first known archeological period in North America begins with the retreat of the Wisconsin Period glaciers. Environmental conditions varied from region to region and developed differently over the course of time.

People during this period were organized into small nomadic groups traveling in search of food. Temporary camps were established at a variety of locations. Bear, deer, elk and smaller game were hunted for food. Artifacts from this period are Clovis projectile points and scrapers. Sites from this period are located in Anne Arundel County, and one site with a Paleo-Indian component, the Higgins site (18AN489), has been documented.

Archaic Period (ca. 6,500 B.C. to 1,000 B.C.) The Archaic Period is generally defined by three phases: Middle, Late, and Terminal Archaic. The Middle Archaic period may have involved a warmer, more humid environment. Settlement during this period became more dispersed and the number of sites increased as people moved away from the watershed drainages. Vegetation in the area was most likely forested slopes with boggy areas on valley floors. Changing environmental conditions forced the adaptation of hunting and settlement patterns.

The Late Archaic Period dates from around 3,000 B.C. to 1,000 B.C. Diagnostics from this period fall into several projectile point types, including Piscataway, Vernon, Holmes, and Dry Brook point types. This settlement pattern still was concentrated on riverine base camps with human activity expanding up onto foothills and uplands. Hunting was the primary food source but people were able to supplement their diet with expanding forest resources such as nuts and berries.

The Terminal Archaic Period, dating from around 2,000 B.C. to 1,000 B.C., is also typified by two projectile points: the Broadspear and the Fishtail point types. Steatite vessels also appeared during this period. Settlement during this period was focused on riverine resources. Base camps were established near water with resource extraction sites located in upland areas.

Numerous Archaic sites have been located in the general vicinity around Fort Meade.

Woodland Period (ca. 1,000 B.C. to A.D. 1,600) The Woodland Period in the northeast United States is also divided into three phases: Early, Middle, and Late. Settlement patterns of the Early Woodland Period were similar to those of the Late Archaic. The Early Woodland sub-period dates from around 1,000 B.C. to 500 B.C. Early Woodland ceramic types included steatite-tempered Marcey Creek and Selden Island wares, as well as Accokeek Cord-marked ceramics.

The Middle Woodland Period dates from 500 B.C. to A.D. 1,000. Diagnostics of this period include Popes Creek Net-Imprinted and Mockley ceramics. Lithic diagnostic types include Selby Bay variants, and Jacks Reef notched and pentagonal projectile points.

The Late Woodland Period (ca. A.D. 1,000 to A.D. 1,650) is also divided into three complexes: the Montgomery Complex, the Mason Island Complex, and the Luray Complex. Variations among these complexes, or phases, primarily involve ceramic types and burial techniques. Large nuclear villages along rivers typify Woodland settlement patterns. Procurement locations and hunting stations were located in a wide variety of areas. Land productivity, population, and village size all increased, and territorial occupation of the region became more unsteady as tribes grew larger.

Historic Context

Euro-American Occupation/Contact Period (1570-1720) Maryland was established as a colony when 150 English colonists founded St. Mary's City in 1634. During Maryland's first century, colonists settled along water routes of the Chesapeake Bay and grew tobacco for European trade. By the 1660's land along the Patuxent River was being settled and farmed. The waters of the Patuxent River were deep enough to allow passage to small ocean-going vessels. A few of the early land grants were large but the majority of the agricultural farms were relatively small, family-operated enterprises.

Agrarian Intensification (1720-1815) By the 1700's Anne Arundel County had become the most populous and the wealthiest county in Maryland. Agriculture continued to dominate the local economy, and primarily consisted of growing tobacco for export to European markets. Early settlers of the region around Fort Meade were Quakers who immigrated to Maryland. While the tobacco crop continued its domination of the agricultural market, after the end of the Revolutionary War many farmers began growing grains in response to economic changes. A small industrial base developed during this time period as well. By 1736, the Patuxent River Ironworks had been established by Richard Snowden, who had been granted a large land tract, known as Robinhood's Forest, in 1686. Large deposits of bog iron ore were located in portions of the Robinhood's Forest tract. A furnace and forge were built on the east banks of the Patuxent and Little Patuxent Rivers. The Snowdens also owned and operated sawmills and grist mills in the region. The Snowden family's economic enterprises were concentrated on the north forks of the Patuxent River near the land Fort Meade presently occupies. It is likely that residences were constructed in the vicinity of industrial activities to provide housing for the workers. Buildings to house the industrial activities would also have been constructed in the area.

Agricultural-Industrial Transition (1815-1870) After the Revolutionary War, the prominence of Anne Arundel County began to wane in Maryland. Soil, depleted from years of tobacco production, forced farmers to relocate in order to find fertile soil. Many people moved from the county to Baltimore, which was becoming the most important economic center in Maryland.

The ore banks of northern Anne Arundel County contributed to the development of Maryland's iron industry in the early 1800's. The ore from the Arundel banks resulted in the production of high quality iron. The ore banks from this region provided ore to several furnaces in the region. The Patuxent furnace remained open until its closure in 1856 due to a shortage of wood and ore. By 1860, the land that would constitute Fort Meade was settled. In addition to residences, buildings in the area included a church, school, general store, and a post office.

The Civil War played an important role in Maryland's history. While the state's political leaders were in support of the Union, the majority of the state's white population were southern sympathizers. Due to its important geographical location surrounding the District of Columbia, the state was occupied by Union troops beginning in April 1861. In Anne Arundel County, Union troops were used to guard strategic railroad lines, such as the Annapolis and Elkridge Railroad, and the Baltimore and Ohio Railroad that linked Washington to the rest of the northern states. There were no major battles fought in Anne Arundel County during the war. Anne Arundel County was occupied by Union troops until the spring of 1866.

Industrial-Urban Dominance (1870-1930) The end of the Civil War brought economic and social change to the county. The agricultural economy was particularly affected by the loss of cheap slave labor. Some slaves remained and worked as paid laborers but many left the county after the war. During the post-war era, the county remained primarily agricultural in nature. The number of farms increased over the years, while their average size decreased. Farmers in the vicinity of what is now Fort Meade primarily produced fruits and vegetables for sale to nearby urban areas. Many of the products were shipped to Baltimore for packing; however, a few local canning and packing plants were established in Odenton.

The post-war development of transportation systems, and railroads in particular, provided farmers with easy access to urban markets. Four railroads operated in the vicinity of the project area: the Baltimore and Ohio, the Annapolis and Elkridge, the Baltimore and Potomac, and the Baltimore and Annapolis Interurban Line. The junctions of the railroad lines became areas of more concentrated development, and small towns were established near these areas.

Urban expansion also affected the agrarian nature of northern Anne Arundel County. The increase of available transportation allowed urban residents from Baltimore to move to the country. Other urban influences altered the agricultural nature of the county. In 1879, a "workhouse" was constructed at Jessup by the Maryland Department of Corrections. The prison produced light manufactured goods for sale, and later, the prisoners also engaged in commercial farming.

There was no federal presence in the county until the onset of the First World War. Camp George G. Meade was one of several military camps authorized by Congress in May of 1917. The establishment of Camp Meade brought an influx of civilian and military personnel to the

region. Local residents were displaced by the government's taking of the land for the camp. Civilian workers were brought in to construct buildings needed for the camp. Approximately 100,000 soldiers were trained at Camp Meade during the First World War.

The Modern Era (1930-Present) The establishment of Camp Meade had a significant impact on the development of Anne Arundel County. During the Second World War, housing areas and commercial developments were established around the installation as Fort Meade became one of the largest employers in the county. After the war, the suburbanization intensified. The government provided low-interest housing loans, and provided funds for a national roadway system. Construction of the Baltimore-Washington Highway provided easy vehicular access to the urban centers of Baltimore and Washington, D.C. The establishment of Friendship International Airport in 1950 provided airborne access to the area. The industrial base of Anne Arundel County increased with the passage of time, altering the rural nature of the northern portion of the county. Presently, large areas of northern Anne Arundel County have been turned into housing developments as a result of the Baltimore's suburban expansion.

The Military Context

Military construction at Fort Meade can be divided into four time periods: 1) World War I (1917-1918); the Inter-War years (1919-1941); World War II (1941-1945), and the Post-War years (1946-present).

World War I Camp Meade was one of 32 cantonments established by the Army during World War I. The cantonments housed both National Guard units as well as Regular Army conscript divisions. The land for Camp Meade was leased in June of 1917 and construction began almost immediately. Construction at Camp Meade was varied, initially consisting of barracks, a hospital complex, headquarters, warehouses, and a remount depot. Construction at Camp Meade was completed in October 1918. Camp Meade provided a variety of tasks related to training and troop mobilization. During the First World War, three divisions trained at the installation prior to deployment to western Europe. Camp Meade was one of the largest cantonments constructed during the First World War, having a capacity of approximately 52,000 soldiers.

At the end of the First World War, the Army faced three choices for Camp Meade: (1) lease the land, (2) return the land to the original land owners and compensate them for damages, or (3) purchase the land outright until a final decision was reached. Since the Army had put approximately \$18 million into the development of Camp Meade, it was determined that the purchase of the land was the most cost-effective alternative.

The Inter-War Years At the end of the First World War, Camp Meade functioned as a demobilization center. During the 1920's, Camp Meade was also used as a civilian training camp. The First World War demonstrated America's general military unpreparedness. As a result, the Congress passed the National Defense Act of 1920 that emphasized training civilian components for potential military service. In addition to the National Guard, the civilian training programs consisted of the Officers Reserve Corps, the Reserve Officers' Training Corps (ROTC), and the Citizens' Military Training Camp (CMTC). Camp Meade held the first CMTC training camp during the summer of 1921. Summer training camp continued through the 1920's.

In 1922, reserve officers were used as instructors during training. In 1925 and 1926, regular Army units participated in the summer training at Camp Meade. As the summer training continued, World War I temporary buildings were removed and then replaced by tent platforms.

In 1928, Camp Meade was designated as a permanent facility. The camp was renamed Fort Leonard Wood because there was already a Fort Meade located in South Dakota. However, in 1929, civilian pressure on Pennsylvania congressmen (General George G. Meade was a Pennsylvania native) resulted in legislation that renamed the post Fort Meade. Fort Meade was one of many installations the Army retained that had been hastily constructed during the First World War. By the mid-1920's the World War I era buildings were generally in poor condition; many of the buildings of Fort Meade's infrastructure were considered the worst in the nation.

In 1926, congress moved to improve conditions on Army installations. Congress authorized the War Department to dispose of unneeded installations and use any capital gains from those closures to invest in improvements on the remaining installations. The Quartermaster Department used this initiative to develop plans for permanent installations. Architects and landscape architects were hired to develop new plans for installation design and construction. Buildings consisted of family housing units, troop support buildings, and general administrative buildings. Buildings constructed at Fort Meade were typically brick buildings with a Georgian Revival design. The first permanent buildings at Fort Meade were built to house tank units that were stationed at the installation.

During the Inter-War years, Fort Meade was one of the primary training schools for armored warfare. The Army had established a Tank Corps during the First World War in 1918. In 1919 the Army reduced the size of its armored forces, and by 1920, the separate Tank Corps was abolished and armor was assigned as an infantry support weapon.

The War Department continued to retain the tank school at Fort Meade under the command of Brigadier General Samuel Rockenbach. Among the officers in Rockenbach's command were Dwight D. Eisenhower and George Patton. Both were strong advocates of the use of armor in future warfare. At the time, military doctrine did not embrace their envisioned use of armor in future conflicts. During the 1920's, the Army conducted several unsuccessful experiments with armor in the field. In 1927, a field exercise was held at Fort Meade; the exercise was a failure, attributed in part by the poor quality of the equipment that was provided. Army doctrine continued to run along traditional lines, thinking that infantry and cavalry would provide the backbone for fighting units. The tank school at Fort Meade continued until its dissolution by the War Department in 1931.

During the 1930's, armored units were stationed as part of the garrison at Fort Meade, but experimentation in the development of armor doctrine had ceased. In addition to the tank school, Fort Meade housed a Cooks and Bakers school during the 1930's; permanent construction for this school was started in 1938.

World War II Prior to the United States' entry into the Second World War in 1941, Fort Meade underwent significant change. Following the success of the German blitzkrieg offensives in 1939 and 1940, the United States began to plan for eventual entry into the war. During the

Second World War, Fort Meade was again used as a site for troop mobilization. In December 1940, construction on a temporary cantonment began. The mobilization period construction program resulted in the construction of 251 permanent brick buildings and 218 temporary wooden buildings. The buildings consisted of barracks, officers' quarters, administrative buildings, and post infrastructure, as well as a variety of troop support buildings. Approximately 18,000 workers were required to complete the mobilization construction program which cost approximately \$15.6 million. In 1941, the Army expanded the boundary of Fort Meade with the purchase of an additional 6,137 acres.

Starting in September 1940, Fort Meade began to function as a processing center for soldiers from the mid-Atlantic region. During the war a total of 1,125,000 soldiers processed into the Army at Fort Meade. In early 1941, Fort Meade became the headquarters for the 29th National Guard Infantry Division. Training ranges were established on the installation; the artillery and simulated combat ranges being among the most important training areas. The Cooks and Bakers school continued operations. This program was expanded to accommodate the large growth of the Army during the war.

After the completion of the initial mobilization construction program, construction continued at Fort Meade. Buildings were constructed to support changing activities on the installation. The uses of the new buildings varied; some were installation infrastructure, others were administrative buildings or warehouses.

Infantry training was one of the primary activities at Fort Meade during the war. A live-fire infiltration course was one of the most realistic training experiences soldiers went through; the soldiers crawled under barbed wire on a simulated battlefield while machine gun fire passed overhead.

Another key mission at Fort Meade during the war was service as a Troop Replacement Depot. The Army required well-trained replacement troops for combat units, but the existing depot replacement system was not producing them. In 1943, the War Department established Fort Meade as one of two replacement depots. Fort Meade provided replacement troops to the European Theater of Operations for the duration of the Second World War. After completion of basic training, troops were assigned to Fort Meade where they received additional training until they were assigned overseas. Approximately 1.4 million soldiers processed through the depot at Fort Meade during the war.

Fort Meade was also used as a prisoner of war (POW) camp during the Second World War. Fort Meade was initially used as an internment camp for several hundred foreign nationals at the beginning of the war. These facilities were also used to hold soldiers that were facing criminal court-martial or criminal charges in the military justice system. In 1943, the internment area was converted into a POW camp, and both German and Italian soldiers were held at the facility. German U-boat prisoners were processed at the camp. Some U-boat prisoners were sent to a special POW camp at Fort Hunt, Virginia, where there was a specifically designed interrogation facility. The remaining U-boat POWs were sent to camps in the western United States. Fort Meade also housed a Prisoner of War Information Bureau. This bureau kept files on all POWs captured during the war, and provided information to enemy governments and the Red Cross.

The last major mission Fort Meade served during the war was as a troop separation center where eligible soldiers were processed out for discharge. The separation center was established in May of 1945, where approximately 400,000 troops were processed through the center before its closure.

Post World War II After the completion of the processing of veterans through Fort Meade, the post returned to its peacetime status. In 1947, the United States Second Army Command came to Fort Meade. Over the years there were several administrative changes in the command structure of the Army that affected Fort Meade. These changes involved reorganization of command structures and changing missions for Fort Meade.

Fort Meade reverted to wartime operations with the outbreak of the Korean War in 1950. A Reception Center was established to in-process new soldiers. In the first six months after the outbreak of the war, 30,000 soldiers were processed.

The vast majority of post-war construction at Fort Meade consisted of family housing. In the 1950's, there were two separate programs that added considerably to Fort Meade's ability to provide family housing to military families on the installation. Approximately 250 Wherry housing units were constructed at Meade Heights in 1952. These residences were constructed and managed by a private developer and were leased by Fort Meade. In 1959, Fort Meade purchased the buildings outright from the developer. In 1959, an additional 1,400 Capehart housing units were constructed in what became the Argonne Hills in the northwestern portion of the installation.

Post-war construction at Fort Meade was not guided by a master plan. Buildings and building complexes were constructed across the installation to meet functional needs. Stylistically, post war construction was uniform. Buildings constructed for military use were typically built using cinder block and very little architectural ornamentation. New construction included infrastructure improvements, family housing, barracks, and administrative buildings.

The development of the Cold War affected some of the development at Fort Meade. In 1953, the first Nike-Ajax air defense unit became operational at Fort Meade with the 36th Antiaircraft Artillery Missile Battalion (AAMB). Ajax was the first air defense missile developed under the Nike program in the 1950's. The 36th AAMB was part of the 35th Antiaircraft Brigade, which was responsible for the air defense of the nation's capital. In December 1953, the 36th AAMB began the conversion to use Ajax missiles instead of the traditional antiaircraft guns. The Nike site at Fort Meade was temporary in nature, and all of the construction for the battery was above ground. In April 1955, there was an accidental missile launch. The missile warhead had not been armed and the missile fell harmlessly to the ground about a mile away.

A prototype of the MISSILE MASTER system, an upgrade to the original Nike system, was deployed at Fort Meade in 1954. The MISSILE MASTER system used a combination of radar, electronics, and computers to track inbound targets. After testing was completed, the system was deployed nationwide in 1957. Fort Meade housed the headquarters for the MISSILE MASTER system, as well as for the mid-Atlantic region Nike batteries.

In 1954, construction began on a building to house the recently established National Security Agency (NSA). The NSA was established by executive order in 1952. The origins of the NSA date back to the passage of the National Security Act of 1947. Passage of this act established the Central Intelligence Agency and the National Security Council. The NSA's predecessor was the Armed Forces Security Agency that was established to integrate the national cryptological effort after the end of World War II. A barracks complex was also constructed at Fort Meade to house military personnel that worked for the NSA.

APPENDIX B

ARCHEOLOGICAL PROCEDURES

APPENDIX B

ARCHEOLOGICAL PROCEDURES

Archeological investigations have identified numerous archeological sites on Fort Meade. All of Fort Meade has been subjected to a Phase I survey or has been evaluated as being disturbed to the point of precluding intact archaeological deposits. The results of all the archeological investigations conducted at Fort Meade have been reviewed and accepted by the Maryland Historical Trust (MHT). A total of 40 archeological sites have been identified at Fort Meade. All of the sites have been evaluated for National Register eligibility and the MHT has concurred with eligibility recommendations, with the exception of the six historic cemeteries that were evaluated as part of this ICRMP update. One prehistoric site, 18AN1240, was found eligible for listing in the NRHP. Regardless of the National Register eligibility, all of the archeological sites at Fort Meade are subject to the provisions of the Archeological Resources Protection Act, which would require Fort Meade to issue a permit to anyone who wished to excavate them.

Fort Meade should initiate the following procedures when archeological resources are discovered on the installation. All archaeological investigations at Fort Meade are conducted in compliance with *Standards and Guidelines for Archaeological Investigations in Maryland, 1994*.

I. Documentation Standards

The initial step for all levels of cultural resource work is the development of a research design (or, statement and objectives) and a mitigation plan when it is determined that mitigation is necessary. These documents:

- identify the overall and specific project goals,
- list the methods and techniques needed to attain these goals,
- provide a focus for the work to progress, and,
- address specific research questions pertinent to the region.

The mitigation plan will vary according to the level of documentation defined in the scope of work.

1. Inventory Projects

The process of documenting cultural resources may be divided into two phases, inventory and mitigation. Identification activities are undertaken to gather information about cultural resources in an area. The scope of these activities will depend on existing knowledge of cultural resources and current management needs. Consequently, an intensive survey is not an essential precursor of every federal undertaking.

Survey and testing procedures constitute the inventory phase. The purpose of pedestrian survey within a project area is to limit the range and types of sites that exist there, and to make preliminary recommendations for further investigation. As a part of this phase, background archival work is conducted within the project area to gain a better understanding of local and regional history. In addition, intensive archival work is performed on cultural resources identified during the survey.

The survey may be accomplished by one of three basic methods, any of which may be appropriate, depending on the objectives of the project:

- A reconnaissance survey scans large areas in order to generate sufficient data to enable generalizations to be drawn about the survey area. Although it may not identify all archeological properties within this area, it produces enough data to generate hypotheses concerning the relationship between landform and site type.
- A sample survey applies the techniques of an intensive survey to representative lands within a project area to develop a model of the pattern of site distribution within the larger area.
- An intensive survey attempts to locate all cultural resources within a project area, collect enough material to enable the site to be dated, and make recommendations as to the site's eligibility for listing in the National Register of Historic Places (NRHP). These are ideal goals and unfortunately it is not always possible to recover sufficient information on a site needed in making a determination of eligibility.

Methods and techniques vary in intensity, depending on the type of survey conducted. For example, survey crews might systematically walk in parallel transects at 15 to 20 meter intervals, generally on cardinal compass bearings. Shovel tests are excavated in high-probability areas. For locating prehistoric sites, the criteria for high probability areas includes mounds, hills, and rises, in close proximity (less than 200 meters) to surface water or springs. High medium and low probability areas are identified in the archeological predictive model. The criteria for historic sites include the presence of large trees and ornamental plants, extant features, or surface artifact scatters.

The soil from shovel tests is sieved through ¼-inch mesh metal screen. High probability areas for prehistoric sites are also tested by taking a five-liter soil sample for later screening through a finer sieve to recover very small pieces of flaked stone, bone, or seeds that would normally drop through the larger mesh.

In areas where deeper deposits are expected, testing with a power auger is done to reach deposits that are impossible or inefficient to reach by shovel testing. If artifacts are located on the surface or in a shovel test, immediate investigation must continue to determine whether this area represents a locality or a site. A locality is considered an isolated find consisting of too little material (or too recent) to be considered an activity or occupation area. A site is defined as an area that yields clusters of artifacts (either surface or subsurface) representing occupation or activity areas.

Shovel tests measuring 30cm in diameter are excavated in the vicinity of the original find to determine the area of the site. If the find is a site, the tests will also aid in defining its horizontal and vertical extent, as well as determining if there are still intact subsurface deposits in the area. This soil is also processed through ¼ inch mesh hardware cloth and at least one five-liter soil sample is taken from each site for further fine screening.

When appropriate, a surface collection of selected diagnostic artifacts is made. Descriptions of each shovel test are made in addition to the other documentation of the site: an appropriate Maryland archeological site form including the site's position on a USGS. 7.5 minute topographic map, a scaled pace-and-compass map, and photographs taken from at least two viewpoints. A temporary marker is placed on the site bearing the site's field number and the date recorded.

A testing phase is required when a definite determination of NRHP eligibility cannot be made. The testing phase may serve other purposes. For example, test excavations are often necessary to obtain data for specific research purposes. Procedures used in the testing phase produce a more accurate data set than is possible during survey.

After the inventory and assessment process has been completed, the future of the eligible resources must be determined.

- If at all possible, the site should be protected from further damage by construction or vandalism.
- It is recommended that sites be left for future investigation, as innovative techniques for gathering more and better data are constantly being developed.
- If this is impossible because the military mission overrides the ability to avoid or protect the site, or the site is in danger of destruction through natural processes, a site-specific mitigation plan should be developed to recover as much information as possible.

Excavation of the site should be designed to answer specific research questions pertinent to the region as a whole. However, the techniques and documentation used should be designed in such a way that the information recovered may be used to help answer research questions generated in the future.

2. Definition of Mitigation Measures for Specific Properties That Cannot be Avoided

- On sites with features exposed on the surface, or historic sites with permanent surface features that provide clues to the size and function of the site, large blocks of units may be placed to gather data on those features and their associated artifacts.
- On sites where structure is not revealed by surface artifacts or features, test excavation units should be systematically placed across the site so that intra-site variability of artifacts and features may be examined. The interval between units on this systematic grid will vary according to the complexity of the site.

- In areas where disturbance will only destroy a portion of the site, excavation in that block may be completed if the area is small. If the area is large, excavation blocks should be focused on those areas that provide the best contextual integrity related to specific occupational periods or components. Since portions of the site will remain intact, the mitigation plan for this type of excavation can define specific questions on the occupation of the excavated portion since future questions can be answered at a later time with excavations in other portions of the site.
- In areas where site deposits are buried, mitigation plans involving heavy machinery for the removal of overburden may be developed. This type of excavation is usually restricted in scope by its very nature. Removing overburden and sampling stratified living surfaces consumes time and money and usually exposes only a small portion of the area that is under investigation.

Avoidance or protection of deeply buried sites is usually possible and should be considered the best alternative.

Of course, a specific data recovery plan will be developed in consultation with the Maryland SHPO. Such recovery plans will be developed in accordance with the Secretary of the Interior's Standards and Guidelines: Archeology and Historic Preservation (44 FR 44716-44740) and 36 CFR Part 66, as well as Maryland standards and guidelines for archaeological investigations. If Fort Meade and the Maryland SHPO cannot reach agreement concerning the data recovery plan, the Advisory Council on Historic Preservation (ACHP) comment shall be solicited as a means of resolving the disagreement.

Federal law regulates requirements for personnel involved in an excavation. Principal investigators must have a graduate degree and experience in the region. The investigator must develop a research design encompassing past work in the region and containing pertinent research questions to be answered by the excavation. The purpose of the excavation is to add to information already gathered and attempt to answer questions that have arisen from other excavations in the region. The excavation should produce an ordered body of data readily usable not just by the investigator but by anyone interested in studying the information in the future. Initial laboratory work (cleaning artifacts, fine screening samples) should have an accompanying notebook, to be used in conjunction with the field documentation, so that materials recovered in the field retain the associations they had when taken out of the ground. Extensive notes on the types of analysis and definition and procedures used should be kept in the notebook. When analysis is completed, the investigator is responsible for disseminating the information to other researchers through a professional-quality report, conference presentations, and professional journals.

Dissemination of information about the project to the public may be accomplished through distribution of a popular version of the final report to area libraries. The data recovered through excavations (that is maps, notes, labeled artifacts, etc.) shall be curated in a Federally-approved institution per 36 CFR Part 79.

II. Nominations to the National Register

One of the responsibilities of the Federal agency under Section 110 of NHPA of 1966, as amended, is

- The agency, with the advice of the Secretary and in cooperation with the SHPO, shall establish a program to locate, inventory, and nominate to the Secretary all properties, under the agency's ownership or control, that appear to qualify for listing in the NRHP.

Following completion of the inventory procedures outlined within this document, those properties judged to be eligible for inclusion in the NRHP, should be formally nominated. Currently AR 200-4 (Cultural Resources Management) does not consider preparing National Register nomination forms a high priority. The Army will determine which resources will be formally nominated. A determination of eligibility (DOE) for a resource provides all the legal protection as does a formal listing.

III. Notification of Archeological Discoveries

When an archeological resource is discovered during an undertaking, Fort Meade will proceed with the treatment of such resources in accordance with the following plan.

- Work shall immediately cease in the area of discovery. The site is to be considered NRHP eligible until a determination is made.
- Within 24 hours of the discovery the Contractor or the facility manager shall notify Fort Meade's cultural resource manager, Mr. Joe DiGiovanni in the DPW-ED, phone number (301) 677-9855.
- Federal archeologists from the U. S. Army Corps of Engineers, Baltimore District will assess the discovery and notify appropriate parties (listed below) of the discovery within 72 hours, providing these parties an opportunity to assess the discovery.
 - Fort Meade will develop and implement actions that take into account the effects of the undertaking on the resource to the extent feasible and the comments of the SHPO and the ACHP pursuant to 36 CFR Part 800.13.
 - If the resource is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act (AHPA), 16 U.S.C. Parts 469(a)-(c), comply with that Act and implementing regulations instead of those identified in 36 CFR 800.
- Fort Meade will continue to make reasonable efforts to avoid or minimize harm to the resource until NHPA and/or AHPA requirements are met.
- When Fort Meade elects to directly involve the ACHP in emergency discovery coordination, the SHPO and ACHP must be notified at the earliest possible time, and

comments shall be requested. The ACHP shall provide interim comments to Fort Meade within 48 hours of the request and final comments to Fort Meade within 30 days of the request.

- When the resource is principally of archeological value and Fort Meade elects to comply with the provisions of the AHPA, Fort Meade shall provide the SHPO an opportunity to comment on the work undertaken and provide the ACHP with a report on the work after is started.
- In the unlikely event that no consensus can be reached on the significance of a discovered resource, the Keeper of the National Register of Historic Places shall be contacted by Fort Meade for a formal determination of eligibility.

IV. Procedures for Granting Archeological Investigation Permits – ARPA Compliance

Procedures for granting archeological investigation permits are covered in detail in the Archeological Resources Protection Act (ARPA) of 1979 and its implementing regulations. This act established definitions, standards, and procedures to be used by all Federal land managers in providing protection for archeological resources.

- In considering whether to grant a permit, the Federal land manager takes into account whether the archeological investigation will conflict with established policy or management plans and if it is in accordance with the other public uses of the land in question.
- Also, if the project may result in harm to or destruction of a Native American tribal, religious, or cultural sites, the Federal land manager must notify appropriate tribes to garner their input.

Once it is determined whether the proposed archeological investigation will conflict with existing land management priorities, the qualifications of the individual or the institution must be considered.

- Individual qualifications include a graduate degree in archeology or anthropology or equivalent experience, the demonstrated ability to carry out the work in question, as well as to carry the research to completion, at least 16 months of specialized training or professional experience, and at least one year of historic archeology experience in order to conduct historic investigations.
- The institution must show evidence of access to an adequate curatorial facility and certify that all required materials will be delivered no later than 90 days after the final report is submitted to the Federal land manager.

In accordance with AR 200-4, ARPA permits for Federally-owned Army property are issued by the USACE Real Estate Office. Once the permit is granted, the installation commander may suspend or revoke it if it should come to his attention that the individual or institution has failed

to meet the terms and conditions of the permit or violated ARPA. The individual or institution may appeal this decision. Grounds for evaluating any possible penalties are set forth in ARPA.

V. Procedures to Review and monitor field Activities, Construction, and Other Undertakings to Insure Compliance with ICRMP.

The DPW-ED at Fort Meade will serve as the Cultural Resource Manager (CRM) and central point of review for all undertakings. Coordination of any undertaking with the SHPO and/or the ACHP will be the responsibility of the CRM.

Monitoring of any activity that may directly or indirectly impact a historic property will involve two phases.

- First, a facility based monitor (in addition to the CRM) will be assigned to the project.
 - The CRM, the field monitor, and a field supervisor of the third party contractor will visit the project area, evaluate site context in relation to planned activities, and decide on how to best protect the site (marked, fenced, sterile overburden), and may seek advice from archeologists at the U.S. Army Corps of Engineers, Baltimore District.
- Second, the monitor and CRM will decide on a schedule of site visits in order to properly supervise the protection of the historic properties. In addition to the scheduled visits there should be spontaneous spot checks to ensure that the contractor is protecting the resources.
 - Any damage to the historic property as a result of the undertaking should be documented through photographs and a written assessment of the damage. The CRM may seek advice from archeologists from the Baltimore District to accomplish this task.
 - Steps taken to ensure that no further damage would occur should also be documented.

APPENDIX C

PROGRAMMATIC AGREEMENT FOR OPERATION, MAINTENANCE, AND REPAIR

PROGRAMMATIC AGREEMENT
AMONG
FORT GEORGE G. MEADE, THE MARYLAND STATE HISTORIC
PRESERVATION OFFICER AND THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION FOR THE OPERATION, MAINTENANCE AND REPAIR OF
FORT GEORGE G. MEADE, MARYLAND

WHEREAS, the Fort George G. Meade (Fort Meade) has determined that the continued operation, maintenance and repair activities at Fort Meade may have the potential to adversely affect historic properties in the Fort Meade Historic District, (District), Maryland, a property eligible for inclusion in the National Register of Historic Places; and,

WHEREAS, Fort Meade has consulted with the Advisory Council on Historic Preservation (Council) and the Maryland State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b)(1) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U. S.C. 470 (f)) and,

WHEREAS, after consultation with the Council, while the Council did not believe it appropriate to enter this Programmatic Agreement, Fort Meade and the SHPO agree that the Council's role would be to assist in resolving any future disagreement(s) that may develop between Fort Meade and the SHPO and,

WHEREAS, the Fort Meade has developed the *Fort George G. Meade Historic District Guidelines (FGGM Guidelines, March 1999)* (Attachment A) to guide operation, repair and maintenance activities within the District; and,

WHEREAS, pursuant to Army Regulation 200-4, the Army has designated the installation commander to serve as the agency official responsible for compliance with the requirements of Section 106 of the National Historic Preservation Act-,

NOW, THEREFORE, Fort Meade, the SHPO and the Council agree that the undertaking described above shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on the District.

STIPULATIONS

Fort Meade shall ensure that the following measures are carried out:

I. PERSONNEL

All work carried out pursuant to this Programmatic Agreement shall be undertaken by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of Interior's Professional Qualification Standards (48 F R 44738-9, hereinafter, Qualification Standards)*, currently the Directorate of Public Works, Environmental Management Office, Cultural Resources Manager.

II. ONGOING MAINTENANCE AND REPAIR

- A. Every five years the Fort Meade, Directorate of Public Works, Environmental Management Office, Cultural Resources Manager or

their designee who meets the *Qualification Standards*, shall conduct cyclical inspections of structures within the District and maintain a record of the results of the inspection.

- B. Fort Meade shall notify the SHPO of all undertakings in the District done in accordance with the *FGGM Guidelines*. The notification may be done via email or paper correspondence. Fort Meade shall maintain a record of all notifications for two years.
- C. Fort Meade shall conduct all maintenance and repair activities that it deems appropriate and practicable within the District in accordance with the *FGGM Guidelines* and the Section 110 Guidelines Section 110(a)(2), Discussion Section (d)(1)(i). All such maintenance and repair activities will not require further review by the SHPO or the Council pursuant to this Programmatic Agreement. These activities shall be reviewed on an annual basis by the SHPO to confirm compliance with the *FGGM Guidelines* and this Programmatic Agreement. The meeting shall be conducted near the anniversary of the date of the execution of the PA, the purpose of the meeting will be to review the undertakings, notifications, and building inspections.
- D. Section 106 consultation with the SHPO shall be conducted on all maintenance and repair work which cannot be conducted in accordance with the *FGGM Guidelines* and with 36 CFR Part 800.3.

III. REHABILITATION

- A. Fort Meade shall ensure that the properties within the District are rehabilitated in accordance with the *FGGM Guidelines*.
- B. Prior to the initiation of rehabilitation activities, Fort Meade shall submit plans and specifications which evidence adherence to the *FGGM Guidelines* to the SHPO for consultation. Fort Meade shall submit schematic plans or 35% design plans in order to initiate early coordination with the SHPO. Should Fort Meade determine that rehabilitation does not conform to the *FGGM Guidelines* or should the SHPO object to the plans and specifications Fort Meade shall initiate consultation with the Council in accordance with 36 CFR Section 800.6 and to ensure compliance with the National Historic Preservation Act.
- C. Fort Meade will provide consulting parties and the general public an opportunity to inspect the *FGGM Guidelines*, plans for rehabilitation, and any other relevant documentation that is developed during the duration of this PA

IV. ANTI-DEFICIENCY ACT COMPLIANCE

The stipulations of this PA are subject to the provision of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs Fort Meade's ability to implement the stipulations of this

PA, Fort Meade will consult according to the amendment and termination found in section VII and IX of this agreement.

V. DISPUTE RESOLUTION

A. Should the SHPO and /or the Council object within thirty (30) days to any plans or other documents provided by Fort Meade or others for review pursuant to this Programmatic Agreement, Fort Meade shall consult with the objecting party to resolve the objection. If Fort Meade determines that the objection cannot be resolved, Fort Meade shall forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

1. Provide Fort Meade with recommendations, which Fort Meade will take into account in reaching a final decision regarding the dispute; or,
2. Notify Fort Meade that it will comment and proceed to comment.

Any Council comment shall be taken into account by Fort Meade with reference to the subject of the dispute.

B. Any recommendations or comment provided by the Council pursuant to Stipulation V(A) above will pertain only to the subject of the dispute; Fort Meade's responsibility to carry out all other actions under this Programmatic Agreement that are not the subject of the dispute will remain unchanged.

VI. ANNUAL REVIEW

Fort Meade will contact the SHPO and the Council, in writing, annually to review and monitor the implementation of the terms of this Programmatic Agreement and determine whether revisions are needed.

VII. AMENDMENTS

- A. Fort Meade, SHPO and/or Council may request that this Programmatic Agreement be amended, whereby the parties shall consult to consider whether amendment is necessary.
- B. If it is determined that amendments to this Programmatic Agreement are necessary then Fort Meade, SHPO and Council shall consult pursuant to 36 CFR Part 800.14(b)(1), as appropriate, to make such amendments. Reviewing parties must comment on, or signify their acceptance of, the proposed amendments to the Programmatic Agreement in writing within thirty (30) calendar days of their receipt.

VIII. LENGTH OF AGREEMENT

The terms of this agreement shall remain in effect for five years from the date of the last signature. At the conclusion of the five-year period the agreement may be extended for a one-year period with the agreement of all the signatories.

IX. TERMINATION OF AGREEMENT

Fort Meade, the SHPO and/or Council may terminate this Programmatic Agreement by providing thirty (30) days written notice to the other signatory parties. During the period after notification and prior to termination, Fort Meade, SHPO and Council shall consult to seek agreement on amendments or other actions that would avoid termination. In the event of termination, Fort Meade shall comply with 36 CFR Part 800.3 through 800.6 with regard to individual undertakings.

Execution and implementation of this Programmatic Agreement evidence that Fort Meade has afforded the Council a reasonable opportunity to comment on continued operation, maintenance repair activities and that Fort Meade has taken into account the effects of the undertaking on the District. Execution and compliance with this Programmatic Agreement fulfill Fort Meade's Section 106 responsibilities for all individual projects of the undertakings covered by this Programmatic Agreement.

FORT GEORGE G. MEADE

By: _____

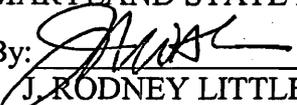

JOHN W. IVES
COL, MI
Installation Commander

Date: _____

10/31/02

MARYLAND STATE HISTORIC TRUST

By: _____


J. RODNEY LITTLE
Director

Date: _____

11-6-02

APPENDIX D

TRIBAL CONSULTATION PLAN

APPENDIX D

TRIBAL CONSULTATION

The NHPA, EO 13007, EO 13175, Presidential Memorandum for Heads of Executive Departments and Agencies dated 29 April 1994: Government-to-Government Relations with Native American Tribal Governments, and the Annotated Policy Document for DoD American Indian and Alaska Native Policy, 27 October 1999, require federal agencies to consult with federally recognized American Indian tribes.

Consultation may take many forms. Fort Meade may need to consult on a project basis for proposed actions that may affect cultural resources of interest to Tribes. If Fort Meade activities have the potential to affect tribal properties or resources, all interested Tribes will be consulted early in the planning process and their concerns will be addressed to the greatest extent possible. Establishing a permanent relationship with Tribes will lead to better understanding of each party's interests and concerns and development of a trust relationship. This will streamline future project-based consultation and streamline the inadvertent discovery process.

It is the goal of the consultation process to identify both the resource management concerns and the strategies for addressing them through an interactive dialogue with appropriate American Indian communities.

Issues and Concerns

Issues are both general and particular. On the one hand, traditional American Indians may attach religious and cultural values to lands and resources on a very broad scale, such as recognizing a mountain or a viewshed as a sacred landscape, and they may be concerned about any potential use that would be incompatible with these values. On the other hand, issues may be specific to discrete locations on public lands, such as reasonable access to ceremonial places, or to the freedom to collect, possess, and use certain regulated natural resources such as special-status species.

Many American Indian issues and concerns, although possibly associated with Fort Meade lands and resources, are based on intangible values. Intangible values are not amenable to "mitigation" in the same way that a mitigation strategy can be used to address damage to, or loss of, physical resources.

Some of the issues that frequently surface in consultation are briefly discussed here to illustrate the relationship of American Indian interests and concerns to Fort Meade land and resource management decisions.

Access. Free access to traditionally significant locations could be a difficult issue for Fort Meade managers when there would be conflicts with other management obligations. For example, individuals' age or infirmity often combine with distance or terrain to make motorized vehicle access the only practical means for some American Indians to reach locations of religious importance. This presents a dilemma to managers where public lands are being managed as

sensitive riparian habitat or for their wilderness character, for example, and motorized vehicle access is accordingly restricted or prohibited. Fort Meade can end up in the contradictory situation of trying to protect resources and landscapes—the continuing existence of which is essential to traditional American Indian practices—from the American Indian practitioners themselves.

Use. One of the more tangible issues with potential for resource conflict is American Indian collection and use of plants and animals for traditional religious and/or cultural purposes. Some species regulated under the Endangered Species Act may have religious or cultural significance. Collection of other resources, such as plant products, minerals, and gemstones, may be regulated under other statutory authority and/or Fort Meade policy.

Sacredness. American Indian attribution of sacredness to large land areas is one of the most difficult issues for Fort Meade managers to reconcile with other management responsibilities. From the viewpoint of traditional religious practitioners, a particular land area could be regarded as a hallowed place devoted to special religious rites and ceremonies. Practitioners might perceive any secular use or development in such a place to be injurious to its exceptional sacred qualities or a sacrilege and, therefore, unacceptable from their view. Nevertheless, the Fort Meade manager might be put in the position of having to weigh a proposal for a legally and politically supported use such as mineral development in an area regarded as sacred and inviolate.

Mitigation. Strategies to reduce impacts of proposed federal actions or the effects of proposed undertakings generally follow models related to NEPA, the NHPA, and their implementing regulations (40 CFR Parts 1500 – 1508 and 36 CFR Part 800). Where American Indian cultural and religious concerns are involved, however, conventional methods of mitigation generally do not appropriately address the consequences felt by American Indian practitioners.

The fact that the CRMs are frequently the ones assigned to do the staff work for certain American Indian issues could lead to some misunderstanding that American Indian issues are cultural resource issues. From there it could be mistakenly deduced that American Indian issues might often be resolved through mitigation methods such as archaeological data recovery. Such ideas would misinterpret the majority of American Indian issues that managers must consider in decision making.

It is feasible, where some issues of American Indian use are involved, that mitigation procedures could work. For example, mitigation could work in cases where common natural products are the object, and either Fort Meade proposal or the American Indian use is flexible.

That is, it may be possible for a Fort Meade proposal to be modified to allow continuing traditional resource use, or it may be acceptable for the American Indian use to be moved outside the proposed affected area. In contrast, however, more abstract, nonresource issues surrounding belief and practice may be a much different matter.

Consultation as Conflict Identification. Consultation is sometimes approached apprehensively, with a view that talking with American Indians will result in more intractable problems than existed before. This view can be relieved by awareness that many American Indian issues and concerns are not much different from public issues and concerns that Fort Meade deals with on a regular basis, and that the means for dealing with them are basically the same.

It is possible for Fort Meade to address many of the concerns for gaining access to sites, attaining needed materials, and protecting American Indian values, within the normal scope of multiple use management. Solutions may include: (1) providing administrative access to sensitive areas; (2) making special land-use designations; (3) developing cooperative management agreements with American Indian communities; (4) stipulating for continuing American Indian uses in leases, permits, and other land-use authorizations; (5) diverting or denying clearly incompatible land uses; and similar affirmative management solutions.

Consultation should identify not only American Indian interests and concerns, but also their suggestions for potentially effective approaches to address them.

Consultation is incomplete and largely pointless unless it is directed toward the identification of mutually acceptable solutions.

When a proposed Fort Meade decision poses potential consequences for lands and resources valued by American Indians, consultation with the community that holds the values and identified the consequences can generate strategies for an appropriate management response.

Timing for Native American consultation will vary depending on the consultation methods, the nature of the ongoing relationship, and the purpose of the consultation. Consultation to develop understanding of interests and concerns with land and resource management, and establish procedures for working together, is a continuous and ongoing process.

There are currently no Federally recognized Native American tribes in Maryland. However, numerous Federally recognized tribes had aboriginal homelands in the vicinity of Fort Meade. A list of these tribes, with tribal representatives and POCs, is included at the end of this appendix. To initiate the tribal consultation process, it is suggested that Fort Meade contact the tribes and inquire as to what types of projects or activities they would like to be notified of.

For project-specific consultation, the CRM should send appropriate reports and documentation to potentially affected THPO/Tribes describing the proposed action and analysis of effects (either Section 106 and/or NEPA documents) and request comments and input. After 30 days, the CRM should follow up with THPO/Tribes for input if no correspondence has been received. A thorough MFR must be kept. For projects of particular interest to THPOs/Tribes, the CRM could consider a site visit and meeting with affected THPOs/Tribes.

**Federally Recognized Indian Tribes with Aboriginal/Ancestral Homelands in the Fort
Meade Area
(Updated 19 September 2005)**

- **Absentee- Shawnee Tribe of Indians of Oklahoma**
Kenneth Blanchard, Governor
Jennifer Makaseah, NAGPRA POC
2025 South Gordon Cooper Drive
Shawnee, OK 74801

- **Cayuga Nation of New York**
Vernon Isaac, Chief
Clinton Halfmoon, NAGPRA POC
P.O. Box 11
Versailles, NY 14168

- **Delaware Nation**
Bruce Gonzalez, President
Phyllis Wahahrockah-Tasi, NAGPRA POC
P.O. Box 825
Anadarko, OK 73005

- **Delaware Tribe of Indians, Oklahoma**
Larry Joe Brooks, Chief
Nrice Obermeyer, NAGPRA POC
220 NW Virginia Avenue
Bartlesville, OK 74003

- **Eastern Shawnee Tribe of Oklahoma**
Charles Enyart, Chief and NAGPRA POC
P.O. Box 350
Seneca, MO 64865

- **Oneida Nation of New York**
Ray Halbritter, Nation Representative
Brian Patterson, NAGPRA POC
223 Genesee Street, Ames Plaza
Oneida, NY 13421

- **Oneida Tribe of Indians of Wisconsin**
Gerald Danforth, Chairman
Christina Danforth, NAGPRA POC
P.O. Box 365
Oneida, WI 54155

- **Onondaga Nation of New York**
Irving Powless Jr., Chief
Richard Hill, NAGPRA POC
RR#1, P.O. Box 319-B
Nedrow, NY 13120

- **Pawnee Nation of Oklahoma**
George E. Howell, President
Francis Morris, NAGPRA POC
P.O. Box 470
Pawnee, OK 74058

- **Seneca- Cayuga Tribe of Oklahoma**
LeRoy Howard, Chief
Roberta Smith, NAGPRA POC
P.O. Box 1283
Miami, OK 74335

- **Seneca Nation of New York**
Rickey L. Armstrong Sr., President
3582 Center Road
Salamanca, NY 14779

Peter Jemison, NAGPRA Coordinator
P.O. Box 239
Victor NY 14564

- **Stockbridge Munsee Community of Wisconsin**
Robert Chicks, President
Sherry White, NAGPRA POC
N. 8476 Moh He Con Nuck Road
Bowler, WI 54416

- **St. Regis Band of Mohawk Indians of New York**
James W. Ransom, Chief
Loran Thompson, NAGPRA POC
412 State Route 37
Akwesasne, NY 13655

- **Tonawanda Band of Seneca Indians of New York**
Emerson Webster, Chief
Darwin Hill, NAGPRA POC
7027 Meadville Road
Basom, NY 14013

- **Tuscarora Nation of New York**
Leo Henry, Chief
Richard Hill, NAGPRA POC
2235 Mount Hope Road
Lewiston, NY 14123

APPENDIX E

**SAMPLE LETTERS AND AGREEMENT DOCUMENTS
FOR COORDINATION**

APPENDIX E

SAMPLE LETTERS AND AGREEMENT DOCUMENTS FOR COORDINATION

The following standardized letters were designed to be incorporated into Fort Meade's current management framework and to assist in complying with Federal laws and regulations concerning historic preservation.

Sample Letter A: SHPO Letter with No Historic Properties Affected Determination with attached documentation

Sample Letter B: SHPO Letter with No Adverse Effect Determination with Full documentation

Sample Agreement Document A: Programmatic Agreement

Sample Agreement Document B: Three-Party Memorandum of Agreement

Sample Letter A: No Historic Properties Affected Determination

[This basic format may be used when either no historic properties are identified in a project's area of potential effect, or historic properties are identified in the area of potential effect, but will not be affected by the project.]

Mr. J. Rodney Little
State Historic Preservation Officer
Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032-2023

Dear [name of current Director]:

Fort Meade is planning the [name of undertaking], [name of State]. Pursuant to 36 CFR 800.4(d) we have determined that there are [are no] historic properties present in the area of potential effect. We have applied the Criteria of Effect, as defined in 36 CFR 800.16(i) and determined that no historic properties will be affected by the undertaking. The following documentation is attached for your review:

- A description of the [name of undertaking], including [specify maps, photographs, etc.];
- A definition of the area of potential effects; and
- A summary description of the efforts we made to identify historic properties in the project's
- area of potential effects, including [specify survey report, etc].
- A description of how we applied the Criterion of Effect, and why we found it to be inapplicable to this undertaking.

Please review the material enclosed and contact [name and telephone number of contact person] if you have any questions. If we do not hear from you within 30 days after your receipt of this letter, we will assume that you do not object to our determination, and will proceed with [the undertaking/our planning process/our review of the application/etc.], subject to the provisions for treating historic properties discovered during implementation of an undertaking contained in 36 CFR Section 800.13.

Sincerely,

Appropriate signature block

Sample Letter B: No Adverse Effect Determination with Full Documentation

Mr. J. Rodney Little
State Historic Preservation Officer
Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032-2023

Dear [name of current Director]:

Fort Meade is planning the [name of undertaking], [name of State]. Pursuant to 36 CFR 800.4(d) we have determined that there are historic properties present in the area of potential effect. We have conducted an Assessment of Adverse Effect, as defined by 36 CFR 800.5 and determined that the undertaking does not meet the criteria of adverse effect. Therefore, according to 36 CFR 800.5(b) we have determined that the undertaking will have no adverse effect on historic properties.

The following documentation is attached for your review:

- A description of the [name of undertaking], including [specify maps, photographs, etc.];
- A description of the historic [property/properties] that [will/may] be affected, including [specify National Registers forms or other descriptive documents, photographs, etc.]
- A description of the efforts we made to identify historic properties in the undertaking's area of potential effects, including [specify survey report, etc.];
- A description of how we conducted the Assessment of Adverse Effect, and why we found each criteria to be inapplicable to this undertaking; and

[Use following language if appropriate.]

We are also forwarding you copies of the plans for the project. OR

The undertaking is being done in accordance with the Secretary's Standards for the Treatment of Historic Properties. If you have and questions or require any additional information please contact POC.

Sincerely,

Appropriate signature block

Sample Document A: Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG
THE DEPARTMENT OF THE ARMY
FORT MEADE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
MARYLAND STATE HISTORIC PRESERVATION OFFICE,
REGARDING THE IMPLEMENTATION OF THE [identify program, etc.]**

WHEREAS, Fort Meade proposes to administer the [name of program or project] with funds from [cite statutory/funding authority]; and

WHEREAS, Fort Meade has determined the [program] may have an effect upon properties included in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council) and the Maryland State Historic Preservation Officer (SHPO/National Conference of State Historic Preservation Officers (NCSHPO/others) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act; (16 U.S.C. 470f), [and Section 110(f) of the same Act (16 U.S.C. 470h-2(f) and

WHEREAS [names of other consulting party/parties, if any] participated in the consultation and [has/have] been invited to [execute/concur in] this programmatic Agreement; and

WHEREAS, the definitions given in Appendix __ are applicable throughout this Programmatic Agreement;

NOW, THEREFORE, Fort Meade, the Council, and the [SHPO/NCSHPO/other] agree that the [program/project] shall be administered in accordance with the following stipulations to satisfy Fort Meade's Section 106 responsibility for all individual [undertakings of the program/aspects of the project].

Stipulations

Fort Meade will ensure that the following measures are carried out:
[insert stipulations here]

() The Council and the [SHPO/NCSHPO/other] may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The installation will cooperate with the Council and the [SHPO/NCSHPO/other] in carrying out their monitoring and review responsibilities.

() Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such amendment.

() Any party to this Programmatic Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, Fort Meade will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

() In the event Fort Meade does not carry out the terms of this Programmatic Agreement, Fort Meade will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that Fort Meade has satisfied its Section 106 responsibilities for all individual undertakings of the program.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
[Name and title of signer]

Fort Meade

By: _____ Date: _____
[Name and title of signer]

MARYLAND HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
[Name and title of signer]

[OTHER SIGNATORIES, IF ANY]

[Note: Signature blocks listed above can be in any order.]

Sample Document B: Three-Party Memorandum of Agreement (MOA)

MEMORANDUM OF AGREEMENT

WHEREAS, the [name of agency] has determined that [name of undertaking] will have an effect upon [name of property or properties] [included in/eligible for inclusion in] the National Register of Historic Places, and has consulted the [name of State] State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); [and Section 110(f) of the same Act (16 U.S.C. 470h-2(f)) and

WHEREAS, [names of other consulting parties, if any] participated in the consultation [and has/have been invited to concur in this Memorandum of Agreement]; and

WHEREAS, the definitions given in Appendix ____ are applicable throughout this Memorandum of Agreement.

NOW, THEREFORE, [name of agency], the [name of State] SHPO, and the Council agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Stipulations

[Name of agency] will ensure that the following measures are carried out:

[insert stipulations here.]

Execution of this Memorandum of Agreement and implementation of its term evidence that [name of agency] has afforded the Council an opportunity to comment on the [name of undertaking] and its effect on historic properties, and that [name of agency] has taken into account the effects of the undertaking on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
[Name and title of signer]

[NAME OF AGENCY]

By: _____ Date: _____
[Name and title of signer]

MARYLAND STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
[Name and title of signer]

[Note: Signature blocks listed above can be in any order.]

Concur:*

[NAME(S) OF CONCURRING PARTY/PARTIES]

By: _____ Date: _____
[Name and title of signer]

* Optional: For use where other parties concur in MOA.

APPENDIX F

**CULTURAL RESOURCES LEGISLATION, REGULATIONS,
AND GUIDELINES**

APPENDIX F

CULTURAL RESOURCES LEGISLATION, REGULATIONS, AND GUIDELINES

Over the years, numerous legislation, regulations, and Executive Orders have been enacted, mandating and providing guidance for the appropriate treatment of cultural resources by federal agencies on federally-owned or controlled property. The most significant legislation in terms of establishing federal agency responsibility for cultural resources is the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470). The Army's interpretation of this legislation, DA Pamphlet 200-4, Cultural Resources Management, is included in this appendix.

The NHPA contains several provisions relating to protective and managerial aspects of cultural resources on federal land. These include authorization for the National Register of Historic Places to be expanded and maintained; the establishment of State Historic Preservation Officers (SHPOs); a grant program to the states for historic preservation programs; establishment of the Advisory Council on Historic Preservation (ACHP); and the establishment of a National Historic Preservation Fund.

The provisions of the NHPA most pertinent for cultural resource compliance at Fort Meade are Sections 106 and 110, the requirements for which are incorporated into DA Pamphlet 200-4. Section 106 requires each federal agency to take into account the effects of its actions on historic properties and afford the ACHP an opportunity to comment on any of the agency's undertakings that could affect historic properties. Guidance for implementation of Section 106 of the NHPA is provided in the enclosed 36 CFR 800, "Protection of Historic and Cultural Properties." Section 110 mandates federal agencies to carry out their programs in accordance with National Historic Preservation policy; designate historic preservation officers to coordinate agencies' activities under the act; identify and preserve historic properties under their ownership or control; and make efforts to minimize harm to National Historic Landmarks.

In 2004 the ACHP amended their regulations. The revised regulations went in to effect on August 5, 2004. There were no procedural changes made in the Section 106 consultation process. The revisions clarified or expanded the Council's role in certain situations. The following summarizes the revisions to the Council's regulation.

800.4(d)(1)-no historic properties affected. This revision establishes/clarifies the procedures for ACHP involvement if there is disagreement between a Federal agency and SHPO/THPO on a finding of no historic properties affected.

800.5(c)(3)(i)-Consulting party review-Council review of findings of assessment of adverse effects. Expands clarifies procedure when the Council reviews the application of the Criteria of Adverse Effect. Requires Federal agency to consider Council comments before proceeding. Documentation on decision making should be provided to SHPO/THPO and the ACHP.

800.8 The following two sections were added or expanded to the revised regulation.

Section (c) (v) directs the agency to describe the measures to avoid, minimize, or mitigate an adverse effect in the NEPA documents.

Section 800 (3) *Resolution of Objections*, was considerably expanded in the revised regulation. When there is an objection to a finding/conclusion in a NEPA document, a procedure was established if the council agrees with the objection. The Federal agency must take into consideration the Council's findings and prepare documentation to show that the agency considered the Council's opinion in its decision making process.

Documents Included in Appendix F*

Document Name/Title	Date of Last Revision	Notes
AR 200-4 Cultural Resources Management	1 October 1998	
DA Pam 200-4 Cultural Resources Management (Draft)	1 October 1998	
36 CFR Part 800: Protection of Historic Properties	5 August 2004	
Section 110 Guidelines	November 1989	Working with Section 106
36 CFR Part 79: Curation of Federally-Owned and Administered Archeological Collections	12 September 1990	
43 CFR Part 10: Native American Graves Protection and Repatriation Act Regulations; Final Rule	4 December 1995	

***Copies of these regulations were provided to Fort Meade with the 2001 ICRMP update. At Fort Meade's request only copies of documents that have been revised since the last update are included in this document.**

Federal Laws, Regulations, Orders and Procedures Not Included in Appendix F

Copies of All Materials are available from a Federal Depository Library

Document Number	Document Name	Location of Additional Copies
85 Stat. 668	Alaska Settlement Act	
Public Law 59-209 34 Stat. 225 16 USC 431 et seq.	Antiquities Act of 1906	National Park Service publication “Federal Historic Preservation Laws” from GPO.
Public Law 74-292 49 Stat. 666 16 USC 461 et seq.	Historic Sites Act of 1935	National Park Service publication “Federal Historic Preservation Laws” from GPO.
Public Law 86-532 16 SC 469-469c 74 Stat. 220	Reservoir Salvage Act of 1960	
Public Law 89-665 80 Stat. 915 16 USC 470 and Public Laws 91-243, 93-243, 96-515, and 102-575	National Historic Preservation Act of 1966 (NHPA) and Amendments of 1970, 1974, 1980, and 1992	National Park Service publication “Federal Historic Preservation Laws” from GPO.
Public Law 91-190 83 Stat. 852 42 USC 4221 et seq.	National Environmental Policy Act of 1969 (NEPA)	National Park Service publication “Federal Historic Preservation Laws” from GPO.
Public Law 93-291 88 Stat. 174 16 USC 469 et seq.	Archeological and Historic Preservation Act of 1974	National Park Service publication “Federal Historic Preservation Laws” from GPO.
Public Law 94-201	American Folklife Preservation Act	American Folklife Center, Library of Congress. 202-707-5510
Public Law 94-422 16 USC 460 et seq.	Land and Water Conservation Act of 1976	
Public Law 95-341 92 Stat. 469 42 USC 1966	American Indian Religious Freedom Act (AIRFA)	
Public Law 96-95 93 Stat. 721 16 USC 470	Archeological Resources Protection Act of 1979 (ARPA)	National Park Service publication “Federal Historic Preservation Laws” from GPO.
Public Law 101-601 104 Stat. 3048 25 USC 3001 et seq.	Native American Graves Protection and Repatriation Act (NAGPRA)	Government Printing Office
Executive Order 11593	Protection and Enhancement of Cultural Environment, May 13, 1971	
48 FR 44716 (Sept. 29, 1983) 48 FR 44728	Archeology and Historic Preservation: Secretary of the Interior’s Standards and Guidelines The Secretary of the Interior’s Standards and Guidelines for Historical Documentation	
48 FR 44730	The Secretary of the Interior’s Standards and Guidelines for	

Document Number	Document Name	Location of Additional Copies
	Architectural and Engineering Documentation	
48 FR 44734	The Secretary of the Interior's Standards and Guidelines for Archeological Documentation	
5 CFR 333	Intergovernmental Personnel Act of 1970	GPO
32 CFR 229	Protection of Archeological Resources: Uniform Regulations	GPO
33 CFR 325	Processing of Department of the Army Permit: Procedures for the Protection of Historic Properties	GPO
36 CFR 60	National Register of Historic Places	GPO
36 CFR 65	National Historic Landmarks	GPO
36 CFR 67	Secretary of the Interior's Standards for Rehabilitation	GPO
36 CFR 68	Secretary of the Interior's Standards for Historic Preservation Projects	GPO
36 CFR 78	Waiver of Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act	GPO
36 CFR 79	Curation of Federally-owned Archeological Resources	GPO
36 CFR 800 44 FR 21 (Sect. 2, 1986)	Protection of Historic and Cultural Properties	GPO

needing permission to pass through this safety zone can contact the representative for the COTP on VHF-FM channel 16 or via phone at (912) 652-4181.

(c) *Enforcement*: This rule will be enforced from 8 p.m. until 10 p.m. each Tuesday from June 15, 2004, through August 24, 2004, and from 8 p.m. to 10 p.m. July 4, 2004.

Dated: June 11, 2004.

D.R. Penberthy,

Commander, U. S. Coast Guard, Acting
Captain of the Port Savannah.

[FR Doc. 04-15247 Filed 7-2-04; 8:45 am]

BILLING CODE 4910-15-U

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

RIN 3010-AA06

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final rule.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has adopted amendments to the regulations setting forth how Federal agencies take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment, pursuant to Section 106 of the National Historic Preservation Act (NHPA). Most of the amendments respond to court decisions which held that the ACHP could not require a Federal agency to change its determinations regarding whether its undertakings affected or adversely affected historic properties, and that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Other amendments clarify an issue regarding the time period for objections to "No Adverse Effect" findings and establish that the ACHP can propose an exemption to the Section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

DATES: These amendments are effective August 5, 2004.

FOR FURTHER INFORMATION CONTACT: If you have questions about the amendments, please call the Office of Federal Agency Programs at 202-606-8503, or e-mail us at achp@achp.gov. When calling or sending an e-mail, please state your name, affiliation and nature of your question, so your call or

e-mail can then be routed to the correct staff person.

SUPPLEMENTARY INFORMATION: The information that follows has been divided into five sections. The first one provides background information introducing the agency and summarizing the history of the rulemaking process. The second section highlights the amendments incorporated into the final rule. The third section describes, by section and topic, the ACHP's response to public comments on this rulemaking. The fourth section provides the impact analysis section, which addresses various legal requirements, including the Regulatory Flexibility Act, the Paperwork Reduction Act, the National Environmental Policy Act, the Unfunded Mandates Act, the Congressional Review Act and various relevant Executive Orders. Finally, the fifth section includes the text of the actual, final amendments.

I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies to take into account the effects of their undertakings on properties included, or eligible for inclusion, in the National Register of Historic Places ("National Register") and to afford the Advisory Council on Historic Preservation ("ACHP") a reasonable opportunity to comment on such undertakings. The regulations implementing Section 106 are codified at 36 CFR part 800 (2001) ("Section 106 regulations").

On September 18, 2001, the Federal District Court for the District of Columbia ("district court") upheld the Section 106 regulations against several challenges. Nevertheless, the district court invalidated portions of two subsections of the Section 106 regulations insofar as they allowed the ACHP to reverse a Federal agency's findings of "No Historic Properties Affected" (previous Sec. 800.4(d)(2)) and "No Adverse Effects" (previous Sec. 800.5(c)(3)). See *National Mining Ass'n v. Slater*, 167 F. Supp. 2d 265 (D.D.C. 2001)(*NMA v. Slater*); and *Id.* (D.D.C. Oct. 18, 2001)(order clarifying extent of original order regarding Section 800.4(d)(2) of the Section 106 regulations).

Prior to the district court decision, an objection by the ACHP or the State Historic Preservation Officer / Tribal Historic Preservation Officer ("SHPO/THPO") to a "No Historic Properties Affected" finding required the Federal agency to proceed to the next step in the process, where it would assess whether

the effects were adverse. An ACHP objection to a "No Adverse Effect" finding required the Federal agency to proceed to the next step in the process, where it would attempt to resolve the adverse effects.

On appeal by the National Mining Association, the D.C. Circuit Court of Appeals ("D.C. Circuit") ruled that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency, and remanded the case to the district court. *National Mining Ass'n v. Fowler*, 324 F.3d 752 (D.C. Cir. 2003)(*NMA v. Fowler*). On September 4, 2003, the district court issued an order declaring sections 800.3(a) and 800.16(y) invalid to the extent that they applied Section 106 to the mentioned undertakings, and remanding the matter to the ACHP.

On September 25, 2003, through a notice of proposed rulemaking (NPRM)(68 FR 55354-55358), the ACHP proposed amendments to the mentioned subsections of the Section 106 regulations so that they would comport with the mentioned court rulings, while still being consistent with the purpose of helping Federal agencies avoid proceeding with a project under an erroneous determination that the project would not affect or adversely affect historic properties, and still triggering Section 106 compliance responsibilities for Federal agencies when they approve or fund State-delegated programs. A related, proposed amendment would clarify that even if a SHPO/THPO concur in a "No Adverse Effect" finding, the ACHP and any consulting party still have until the end of the 30 day review period to file an objection. Such objections would require the Federal agency to either resolve the objection or submit the dispute to the ACHP for its non-binding opinion. Finally, the ACHP also took the opportunity in that notice to submit an amendment to clarify that the ACHP could propose an exemption to the Section 106 process on its own initiative, rather than needing a Federal agency to make such a proposal.

After considering the public comments, during its business meeting on May 4, 2004, the ACHP unanimously adopted the final amendments to the Section 106 regulations that appear at the end of this notice of final rule.

II. Highlights of Amendments

ACHP Review of "No Historic Properties Affected" and "No Adverse Effect" Findings

As stated above, the district court held that the asserted power of the ACHP to reverse Federal agency findings of "No Historic Properties Affected" and "No Adverse Effect" exceeded the ACHP's legal authority under the NHPA. Accordingly, the final amendments make it clear that ACHP opinions on these effect findings are advisory and do not require Federal agencies to reverse their findings.

The final amendments still require a Federal agency that makes an effect finding and receives a timely objection to submit it to the ACHP for a specified review period. Within that period, the ACHP will then be able to give its opinion on the matter to the agency official and, if it believes the issues warrant it, to the head of the agency. The agency official, or the head of the agency, as appropriate, would take into account the opinion and provide the ACHP with a summary of the final decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion. However, the Federal agency would not be required to abide by the ACHP's opinion on the matter.

The amendments also change the time period for the ACHP to issue its opinion regarding "No Adverse Effect" findings, by allowing the ACHP extend it 15 days. This change is deemed necessary since, among other things, the ACHP opinions may now be addressed to the head of the agency, and would therefore more likely be ultimately formulated by ACHP members, as opposed to such tasks being mostly delegated to the staff. Such formulation of opinions by ACHP members is expected to require more time considering that these ACHP members are Special Government Employees who reside in different areas of the country and whose primary employment lies outside the ACHP.

In response to public comments, as detailed in the third section of this preamble, the ACHP made several changes to the originally proposed amendments:

(1) When the ACHP decides to send its opinion regarding effect findings to the head of an agency, that decision must be guided by the criteria of appendix A of the Section 106 regulations;

(2) If the ACHP decides to object on its own initiative to an agency finding of effect within the initial 30-day review period open to SHPO/THPOs and consulting parties, the ACHP must

present its opinion to the agency at that time, rather than merely objecting and triggering the separate ACHP review period for objection referrals;

(3) The head of an agency that has received an ACHP opinion on an effect finding may delegate the responsibility of preparing the response to that opinion to the Senior Policy Official of his/her agency;

(4) When requesting the ACHP to review effect findings, Federal agencies must notify all consulting parties about the referral and make the request information available to the public;

(5) Regarding findings of "no adverse effect," the default period for ACHP review is 15 days. However, the ACHP may extend that time an additional 15 days so long as it notifies the Federal agency prior to the end of the initial 15 day period;

(6) The amendments now clarify that, when an agency and SHPO/THPO disagree regarding a finding of "no historic properties affected," the Federal agency has the option of either resolving the disagreement or submitting the matter for ACHP review; and

(7) The ACHP will retain a record of agency responses to ACHP opinions on findings of effect, and make such information available to the public.

Clarification of the 30-Day Review Period for No Adverse Effect Findings

As stated in the NPRM, questions had arisen under the Section 106 regulations as to whether a Federal agency could proceed with its undertaking immediately after the SHPO/THPO concurred in a finding of "No Adverse Effect." The Section 106 regulations specify a 30-day review period, during which the SHPO/THPO, the ACHP and other consulting parties can lodge an objection. The result of such an objection is that the Federal agency must submit the finding to the ACHP for review. If the SHPO/THPO concurs, for example, on the fifth day of the 30 day period, the language prior to these final amendments may have given some the erroneous impression that this would cut off the right of other parties to object thereafter within the 30 day period (e.g., on the 15th or 28th day).

The final amendment provides clearer language, consistent with the original intent expressed in the preamble to the previous iteration of the Section 106 regulations ("the SHPO/THPO and any consulting party wishing to disagree to the [no adverse effect] finding must do so within the 30 day review period," 65 FR 77720 (December 12, 2000) (emphasis added)) and in subsequent ACHP guidance on the regulations ("Each consulting party has the right to

disagree with the [no adverse effect] finding within that 30-day review period;" www.achp.gov/106q&a.html#800.5). All consulting parties have the full 30 day review period to object to a no adverse effect finding regardless of SHPO/THPO concurrence earlier in that period.

As explained below, a few public comments objected to this amendment. However, the ACHP decided to leave the language regarding this issue as it was proposed in the NPRM.

Authorization of the ACHP to Initiate Section 106 Exemptions

Under the Section 106 regulations prior to these final amendments, in order for the ACHP to begin its process of considering an exemption, the ACHP needed to wait for a Federal agency to propose such an exemption. Under the final amendments, the ACHP will be able to initiate the process for an exemption on its own.

As stated in the NPRM, the ACHP believes it is in a unique position, as overseer of the Section 106 process, to find situations that call for a Section 106 exemption and to propose such exemptions on its own. There may also be certain types of activities or types of resources that are involved in the undertakings of several different Federal agencies that would be good candidates for exemptions when looking at the undertakings of all of these agencies, but that may not be a high enough priority for any single one of those agencies to prompt it to ask for an exemption or to ask for it in a timely fashion. The ACHP will now be able to step into those situations and propose such exemptions on its own, and then follow the already established process and standards for such exemptions.

As detailed in the third section of this notice, there were several comments on this part of the amendments. However, as explained below, the ACHP decided to not make any changes to this part of the proposed amendments.

ACHP Review of Objections Within the Process for Agency Use of the NEPA Process for Section 106 Purposes

A public comment correctly pointed out that the proposed amendments failed to adjust the process regarding NEPA/106 reviews (under section 800.8(c)) in accordance with the *NMA v. Slater* decision. If left unchanged, that process could have been interpreted as allowing the ACHP to overturn agency findings of effect.

Accordingly, the final amendments change that process to comport with the *NMA v. Slater* decision, in a manner consistent with the final amendments

regarding the review of effects under the regular Section 106 process at sections 800.4(d) and 800.5(c).

Applicability of Section 106 to Undertakings That Are Merely Subject to State or Local Regulation Administered Pursuant To a Delegation or Approval by a Federal Agency

As explained above and in the NPRM, the D.C. Circuit held that Section 106 does not apply to undertakings that are merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Accordingly, the final amendment removes those types of undertakings from the definition of the term "undertaking" on section 800.16(y).

Formerly, an individual project would trigger Section 106 due to its regulation by a State or local agency (through such actions as permitting) pursuant to federally-delegated programs such as those under the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.* Under the final amendment, such State or local regulation will not, by itself, trigger Section 106 for those projects.

Nevertheless, it is the opinion of the ACHP that the Federal agency approval and/or funding of such State-delegated programs does require Section 106 compliance by the Federal agency, as such programs are "undertakings" receiving Federal approval and/or Federal funding. Accordingly, Federal agencies need to comply with their Section 106 responsibilities regarding such programs before an approval and/or funding decision on them. Agencies that are approaching a renewal or periodic assessment of such programs may want to do this at such time.

Due to the inherent difficulties in prospectively foreseeing the effects of such programs on historic properties at the time of the program approval and/or funding, the ACHP believes that Section 106 compliance in those situations should be undertaken pursuant to a program alternative per 36 CFR 800.14. For example, that section of the regulations provides that "Programmatic Agreements" may be used when " * * * effects on historic properties cannot be fully determined prior to approval of an undertaking; [or] * * * when nonfederal parties are delegated major decisionmaking responsibilities * * *" 36 CFR 800.14(b)(1). The ACHP stands ready to pursue such alternatives with the relevant Federal agencies.

While there were various comments on this part of the amendments and the explanatory material of the NPRM, the

ACHP decided not to change the amendments regarding this issue. See the discussion of those comments, below.

III. Response to Public Comments

Following is a summary of the public comments received in response to the NPRM, along with the ACHP's response. The public comments are printed in bold typeface, while the ACHP response follows immediately in normal typeface. They are organized according to the relevant section of the proposed rule or their general topic.

NMA v. Slater and Saylor Park Case

Several public comments asked the ACHP to mention a case out of a District Court in Ohio. In that case, *Saylor Park Village Council v. U.S. Army Corps of Engineers*, 2002 WL 32191511 (S.D. Ohio Dec. 30, 2002); 2003 WL 22423202 (S.D. Ohio Jan. 17, 2003) (Saylor Park), the judge specifically disagreed with the *NMA v. Slater* decision regarding the ACHP's authority to overturn agency effect findings. These public comments also argued that the Saylor Park decision relieved the ACHP from amending the Section 106 regulations.

The Saylor Park case involved a Corps of Engineers (Corps) Clean Water Act permit needed for the construction of a barge loading facility. A group of residents who lived near the proposed facility sued the Corps alleging that it had issued the permit in violation of Section 106. While the Corps determined that the undertaking would not have an effect on historic properties, the SHPO and others disagreed and argued that the Corps should continue the Section 106 process. The Corps upheld its determination of no effect and, based on the *NMA v. Slater* decision, decided its Section 106 responsibilities were concluded. It then issued the permit and this lawsuit followed.

The Saylor Park court expressly disagreed with the *NMA v. Slater* holding that section 800.4(d)(2) of the Section 106 regulations was substantive and therefore beyond the scope of the ACHP's authority. As explained above, that section required an agency to move to the next step of the Section 106 process if, among other things, the ACHP and/or SHPO/THPO disagreed with its finding that no historic properties would be affected by the undertaking. The court in Saylor Park held that this provision of the regulations was not substantive because, rather than restraining the agency's ability to act, it merely added a layer of consultation (" * * * no matter the process, the agency never loses final

authority to make the substantive determination * * *").

The ACHP presented a similar argument to the *NMA v. Slater* judge. The ACHP continues to believe that neither this provision nor the similar one regarding "no adverse effects" (nor any other provisions of the regulations for that matter) were substantive. None of these provisions imposed an outcome on a Federal agency as to how it would decide whether or not to approve an undertaking. They merely provided a process that assured that the Federal agency took into account the effects of the undertaking on historic properties. They did not impose in any way whatsoever how such consideration would affect the final decision of the Federal agency on the undertaking. They did not provide anyone with a veto power over an undertaking. See 65 FR 77698, 77715 (Dec. 12, 2000).

While the ACHP still disagrees with the *NMA v. Slater* partial invalidation of sections 800.4(d)(2) and 800.5(c)(3), it nevertheless believes it must proceed with the amendments in this rulemaking. The *NMA v. Slater* court (the D.C. District Court) has direct jurisdiction over the ACHP and has issued specific orders (1) partially invalidating the provisions that are the main subject of these amendments and (2) remanding these matters to the ACHP for action consistent with its decisions. Moreover, as opposed to the situation in the Saylor Park cases, the ACHP was a party before the court in the *NMA* cases. The ACHP is not confronted with conflicting orders from different courts. Under these circumstances, the ACHP did not believe it had the option of ignoring the *NMA v. Slater* and *NMA v. Fowler* decisions and orders, despite the ACHP's disagreement with them. It therefore has proceeded with this rulemaking, which now has culminated with the amendments described herein.

Sections 800.4(d) and 800.5(c)—Review of "No Historic Properties Affected" and "No Adverse Effect" Findings

Make the stipulation regarding "no historic properties affected" consistent with that regarding "no adverse effect" objections, and direct an agency and SHPO/THPO to continue to consult when there is disagreement with an agency's determination, as opposed to requiring automatic referral to the ACHP. It was not the purpose of the ACHP to foreclose the opportunity of Federal agencies and SHPO/THPOs to attempt to work out their differences regarding this finding. Therefore, the amendments now explicitly state that, upon disagreement, Federal agencies

“shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council” for review. See Section 800.4(d)(1)(ii).

If the option is invoked by the ACHP to require decisions from agency heads in other than very rare instances, the work of Federal agencies could be seriously impeded (particularly those agencies with multi-member agency heads like the FCC). Even if used sparingly, this would delay the deployment of needed service to the public, and could also delay FCC consideration of other important issues of telecommunications policy having no historic preservation implications. If the ACHP concludes that these provisions are necessary and within its statutory authority, we urge the ACHP to invoke the proposed rules sparingly with a view toward requiring a response from agency heads only in cases presenting the most significant questions of law or policy or having such magnitude as to potentially cause the destruction of, or other very significant impact on, historic properties. The ACHP believes it has the legal authority to issue comments on agency effect findings to the heads of agencies. Among other things, the statutory language of Section 106 specifies that “[t]he head of any such Federal agency shall afford the Advisory Council on Historic Preservation * * * a reasonable opportunity to comment with regard to such undertaking.” 16 U.S.C. 470f (emphasis added). A more than reasonable interpretation of that statutory language would indicate that the ACHP could provide its opinion on the effects of an undertaking to the head of an agency. Now that such ACHP’s opinions on effects are advisory, this could be the ACHP’s last reasonable opportunity to comment on the undertaking within the Section 106 process. Nevertheless, in response to this and other similar comments, the ACHP has changed the proposed amendments so that the head of an agency can delegate the duty of responding to the ACHP’s opinions on effects to the agency’s Senior Policy Official. The Senior Policy Official, as now defined in the Section 106 regulations, is the senior policy level official designated by the head of the agency pursuant to Section 3(e) of Executive Order 13287. In addition, the final amendments provide that ACHP decisions to issue opinions to heads of agencies must be guided by the criteria of appendix A to the regulations.

In consultations where the ACHP has entered the process, there appears to be no good reason to allow the ACHP to

object and appeal to itself. Doing so merely adds unnecessary expense and delay to an already overly burdensome process. * * * If the ACHP desires to object to the finding, it should do so and communicate its comments to the agency within the original 30-day review period. The ACHP has changed the proposed amendments in response to this and other similar comments. The amendments regarding effect findings, as originally proposed, could allow the ACHP to object twice to Federal agency findings of effect: once during the initial 30-day period for parties to review the finding, and a second time once the agency finalized its finding and, upon objection, needed to refer the matter to the ACHP for an advisory opinion within a separate review period. This could have allowed the ACHP to object in the initial period and then object again, thereby giving the ACHP two independent opportunities to review and object to the finding. This was not intended. The amendments were edited so that if the ACHP provides a written objection to the agency within the initial 30-day review period, the agency does not need to refer the same matter to the ACHP for the “second” review. However, the ACHP written objection in the initial 30-day period would be subject to the same conditions that would have applied for the “second” referral (e.g., ACHP discretion to send the opinion to the head of the agency; and requirement that a response come from the agency head or the Senior Policy Official if the matter is sent to the head of the agency).

The ACHP is not required to respond to frivolous or unfounded objections, or in fact to objections of any kind, but as written in these amendments, the full 30-day delay from the filing of such objections is automatic and unavoidable. In order to limit unnecessary objections and minimize wasteful delay, objections that trigger a 30-day review ought to be limited to written objections that assert and substantiate a substantial likelihood of significant adverse effect, consisting of damage or destruction to a highly important historic property. Another proposed idea is to add a process for agencies or applicants to dismiss insufficiently supported objections. The ACHP disagrees. While the ACHP may (and does) disagree with certain SHPO/THPO objections from time to time, it does not believe such objections are frivolous or unfounded. Moreover, with regard to objections to “no adverse effect” findings, the ACHP has changed the proposed amendments so that the default time period for ACHP response

is 15 days. An objection that is frivolous or unfounded would, at worst, only cause a 15 day delay in the process. The documentation that agencies are already required to provide the ACHP would adequately show the seriousness (or lack thereof) of objections. Particularly with regard to the idea of a motion to dismiss process, the ACHP also does not believe that adding such an additional layer of process would achieve much in terms of saving time or providing for predictability. As the comment itself points out, time (the comment suggests ten days) would be needed for the ACHP to consider and dispose of such motions to dismiss, not to mention the time for the agency or applicant to draft and provide the ACHP with the motion itself. In addition, this additional layer of process would provide a further area of potential, time-consuming litigation for those who want to challenge an ACHP’s decision to dismiss their objection. Moreover, inserting this motion to dismiss process into the regulations would further clutter what many industry commenting parties deem to be an overly complicated process. Finally, the comment provides no basis for limiting the analysis to “significant” adverse effects or “highly important” historic properties. As explained in the preambles to previous iterations of the Section 106 regulations and case law, the ACHP believes it has properly defined the “adverse effects” that should be considered in the Section 106 process, and properly defined the scope of “historic properties” to be considered in the process. See *NMA v. Slater*.

The proposal exceeds the standards explained in the *NMA v. Slater* case, in that it imposes a further procedural requirement, after the agency has made a determination of effect, which additional requirement is obviously designed to put pressure on the agency to reconsider or reverse its decision. The ACHP disagrees. The amendments do not exceed the standards explained in the *NMA v. Slater* case. The court partially invalidated sections 800.4(d)(2) and 800.5(c)(3) insofar as they forced an agency to proceed to the next step of the process when the ACHP objected to such agency’s effect finding, because the court viewed this as the ACHP effectively reversing the agency’s substantive effect findings. The amendments make it clear that the ACHP’s opinions on effect findings are not binding on the agency and that only the agency can reverse its own findings. If the agency disagrees with the ACHP’s opinion as to whether there is an effect or an adverse effect, the agency

responds to the ACHP opinion and is done with the Section 106 process.

The ACHP should be required to keep and report statistics, as a part of its annual report, on the number of times that federal agencies have bypassed the Section 106 process by maintaining initial findings of no effect and no adverse effect despite SHPO/THPO and ACHP objections. This and similar comments reflected the opinion that certain Federal agencies, knowing that the ACHP could no longer "overturn" their findings of effect, would take advantage of the situation and be more willing to make questionable findings of "no historic properties affected" or "no adverse effects." The ACHP has changed the proposed amendments so that they now include a requirement for the ACHP to keep track of how agencies respond to ACHP opinions regarding effects, and make a report of such data available to the public. This will help the ACHP in overseeing the Section 106 process. The ACHP intends to use this information in order to, among other things, bring any recurring problems to the heads of the relevant agencies and suggest ways in which they can improve the effectiveness, coordination, and consistency of their policies and programs with those of the NHPA. See 16 U.S.C. 470j(a)(6). The ACHP decided that, in order to present a fuller and more accurate picture, the information to be collected must include not only the occasions where an agency proceeds in disagreement with the ACHP, but also those occasions where an agency changes its finding in accordance with the ACHP advice. The ACHP will also keep track of the instances where the ACHP decides to not respond to an agency referral of an objection. Finally, while the ACHP will maintain discretion as to how it makes this information available to the public, its intent is to be flexible in using mechanisms such as its web-site or other means. The ACHP will not require members of the public to file Freedom of Information Act requests in order to get that information.

While there is great value in a process that would allow time for the ACHP to comment to the head of a federal agency where the issue warrants, many of the review requests that the ACHP will receive will not warrant such attention. In the interest of streamlining the compliance process, a 15-day review period for "no adverse effect" determinations is adequate for most of these requests, and an amendment could provide for a 30-day review period in certain situations. Specific criteria, such as those contained in Appendix A of the current regulations,

are needed to provide a threshold between standard staff review and full ACHP involvement. The ACHP received this and other similar comments. In response, the ACHP decided to change the amendments so that when it receives a referral for review of a "no adverse effect" objection, the default time period for such review is 15 days. If the ACHP deems that it needs more time, it can extend the review period an additional 15 days so long as it notifies the agency. This allows simple or weak objections to be dispatched sooner, while also allowing the ACHP staff and/or membership to better manage their workload so that they can dedicate the necessary time to properly review and respond to objections that present more significant and complex issues. The ACHP does not believe that the 15 additional days, when actually invoked by the ACHP, would seriously affect project planning and could be accommodated by agencies in their establishment of the project review and approval schedule. Finally, in response to this and similar comments, the ACHP changed the amendments so that an ACHP decision to send its opinion to the head of an agency must be guided by appendix A of the regulations.

At the very least, agencies should be required to copy SHPOs on the documentation submitted to the ACHP when an objection is referred to the ACHP. Absent this, the SHPOs will have no assurance that their position has been accurately represented to the ACHP or that the documentation provided by the agency is the same as that submitted to the SHPO for review—or, for that matter, that the project has been forwarded to the ACHP. In response to this and other similar comments, the ACHP changed the proposed amendments so that agencies are now required to notify consulting parties (which includes SHPO/THPOs) that a referral has been made to the ACHP and to make the information packet sent to the ACHP available to the public. It is the understanding of the ACHP that many agencies already proceed in this way anyhow.

Provide for Tribes and THPOs to request additional time for review, rather than allowing the federal agency to wait out an absolute cut-off time of thirty (30) days. The ACHP believes that the amendments strike an appropriate balance between the need for an adequate time period for review, and the need for projects decisions to be made in a timely manner and within a predictable time frame. However, the ACHP strongly encourages Federal agencies to facilitate effective tribal

involvement by being receptive to tribal requests for additional time for review.

Strike "assume concurrence with the agency's finding" and replace with "proceed in accordance with the agency official's original finding." No reason for the agency to assume anything about the ACHP's position due to its silence. The ACHP agrees that the terminology regarding "assuming concurrence" may not necessarily reflect the position of the entity that fails to respond within the regulatory time frame. Accordingly, that terminology has been removed. Nevertheless, the legal and procedural effect of a failure to respond within the provided time frame remains exactly the same as before (e.g., "the agency official's responsibilities under section 106 are fulfilled" if neither the ACHP nor the SHPO/THPO object to a no historic properties affected finding within the 30-day review period).

Concerned about the requirement that the agency provide "evidence" that the agency considered the ACHP's opinion. We understand the need of the agency to provide a responsive reply to the ACHP, however the Department finds this requirement confusing, overly burdensome, and unjustified. The ACHP clarifies that this requirement for providing "evidence" simply means that the agency's written response must explain the agency's rationale for either following or not following the ACHP opinion so that the document reflects the fact that the agency actually considered the ACHP opinion.

Require the agency to prepare additional documentation for the ACHP's review, beyond the existing requirements of 36 CFR 800.11(d)-(e). This should specifically include responses from the agency to any objections raised by a consulting party or the SHPO/THPO, for both "no historic properties affected" and "no adverse effect" findings. Several comments raised this issue. However, it has been the ACHP's experience that the current documentation requirements at the cited provision of the regulations are sufficient for the ACHP to carry out an informed and adequate review. Moreover, it is the ACHP's experience that in most, if not all, cases of objection referrals to the ACHP, the Federal agencies explain why they believe the objection is incorrect. This explanation necessarily responds to the objection itself.

If the SHPO/THPO or a consulting party disagrees with the agency's determination regarding effects, require the finding to be certified by the Federal Preservation Officer, and/or another agency official who is a historic preservation professional, meeting the

Secretary of the Interior's Professional Qualifications Standards, 62 FR 33707 (June 20, 1997), prior to sending the finding to the ACHP for review. The ACHP declined to follow the recommendation in this comment. Many Federal agencies have historic preservation professionals in their staff who review and/or develop agency findings in the Section 106 process. In addition, other professionals at the SHPO/THPO offices, and sometimes the ACHP, also review the findings in the course of the normal process. Accordingly, the ACHP did not believe that the delay that could be created by such an additional layer of process would be justified.

Actual comments should be required from the ACHP to help rule on effect disagreements. The ACHP simply does not have the staff resources that would be needed to respond to every objection referred to it regardless of merit.

Clarification of the 30-Day Review Period for No Adverse Effect Findings

Federal agencies should not have to wait until the end of the 30-day period if the agency obtains the agreement of all the consulting parties within that period. This concept was rejected since there was a concern that it could motivate agencies to allow fewer consulting parties into the process in order to increase the chances of having a shorter review period. The ACHP also wanted to provide those who may have been denied consulting party status or who may not have found out about the undertaking until late, a better opportunity to bring their concerns to the ACHP.

Conferring authority to trigger ACHP review on every consulting party would be counterproductive and inefficient since the mere assertion of a disagreement, regardless of its merit, could result in the elevation of the dispute to the ACHP. This would create delays. The proposed amendments do not change this aspect of the process. Assessing the merit (or lack thereof) of disagreements would insert uncertainty in the process. Once the ACHP has received a referral of a disagreement, it could dispose of those which it deems to have no merit with little delay.

Section 800.14(c)—Exemptions

Suggest that the ACHP provide a specific mechanism that ensures notification of and input from the affected agency. The ACHP will notify and consult with those agencies affected by any exemption proposed by it.

Authorizing the ACHP to exempt "certain" arbitrary projects from Section 106 weakens the Act. The process for

exemptions retains the high standard that has to be met by any program or category of undertakings seeking an exemption. Their potential effects upon historic properties must be "foreseeable and likely to be minimal or not adverse" and the exemption must be consistent with the purposes of the NHPA. See 16 U.S.C. 470v and 36 CFR 800.14(c)(1).

Since the members of the ACHP are presidential appointees, it would be disingenuous to contend that political partisanship would have no effect on these exemptions. There also seems to be a conflict of interest in the ACHP proposing an exemption, and then deciding on it. "Partisanship" plays no role in these decisions. As stated above, exemptions must meet high, non-partisan standards in order to be adopted. See 16 U.S.C. 470v and 36 CFR 800.14(c)(1). Moreover, even without the amendments, Federal agencies other than the ACHP could propose exemptions. Those Federal agencies are led by presidential appointees. Finally, under the ACHP's operating procedures, ACHP Federal agency members are not permitted to vote on matters in which their agency has a direct interest not common to the other members.

The exemptions process should be amended to include a procedure for SHPOs/THPOs or other consulting parties to request a determination from ACHP that a specific undertaking that would normally be exempt should be reviewed. The ACHP believes this is unnecessary. The exemptions themselves, as adopted by the ACHP, can contain such a process. Moreover, the exemptions can be drafted so that they place situations that could present adverse effects beyond their scope. Finally, the regulations allow the ACHP to revoke exemptions. Section 800.14(c)(7). Those who believe an exemption should be revoked can ask the ACHP to do so under the cited section.

If the ACHP is authorized to propose and approve exemptions on its own initiative, where will we turn with our objections to these exemptions? The consultation process regarding exemptions has not changed. Those who object to the exemptions can present such objections to the ACHP. Much like the rulemaking process, the fact that the ACHP has submitted a proposal does not necessarily mean that the ACHP will adopt the proposal without changes or adopt the proposal in the first place. The ACHP will consider objections to exemptions it proposes the same way it will consider those regarding exemptions other agencies propose.

The ACHP fails to make a persuasive case as to why it needs additional

authority to search out and adopt exemptions from Section 106. There is no claim that the current regulation has caused any particular problems, or has been found inadequate in some way. If a potential Section 106 exemption is "not * * * a high enough priority for any single * * * agency[y] to prompt it to ask for an exemption or to ask for it in a timely fashion," it is not clear why it should be a priority for the ACHP. As opposed to most of the other agencies of the Federal government, the ACHP has a mission focused on historic preservation matters and assisting other agencies regarding such matters. Other agencies have missions that are focused on other matters. It is not surprising, therefore, that their priorities are not focused on historic preservation issues. This does not mean, however, that such issues are unimportant or not deserving of the ACHP's attention. If a program or category of undertakings meet the standards for an exemption, such exemptions should be considered by the ACHP whether or not the relevant agency can focus its energies on the issue. Also, due to its size and flatter management structure, the ACHP can address these issues more promptly. Furthermore, the ACHP believes this amendment appropriately and responsibly promotes the goal of environmental streamlining. Finally, as stated in the NPRM, the ACHP is in an unique position to identify cross-cutting exemptions that could benefit several agencies.

The ACHP should be required to keep and report statistics, as a part of its annual report, on the number and name of project exemptions that it has initiated. The ACHP does not see a reason for such reporting considering the fact that exemptions must be published in the *Federal Register* before they go into effect. See Section 800.14(c)(8).

This is an unreasonably indefinite provision that short-circuits protection of historic properties encouraged by current regulations requiring Federal agencies to propose exemptions individually rather than in broad classes. The proposed amendments will inevitably result in failures to appreciate unique characteristics of individual properties subsumed in exempted categories or affected by an unacceptably undefined "certain types of activities," and therefore, a significant erosion of preservation standards. The amendments do not alter the scope of possible exemptions (e.g., program or category of agency undertakings). They also do not change the high standards that exemptions must meet. See 16 U.S.C. 470v and 36

CFR 800.14(c)(1). Finally, they do not change the consultative process through which proposed exemptions are considered.

The rule does not allot a specific time period for the THPOs/SHPOs to comment on the proposed exemptions. THPOs/SHPOs should be given the same period of time to comment on proposed exemptions as the ACHP. The THPOs/SHPOs review and comment period should occur prior to the ACHP review and comment period so that the ACHP may take into account the input of the THPOs/SHPOs in their decision-making. The exemptions process does not specify a time period for THPO/SHPOs to comment because different exemptions, due to their varying complexity and impact, may call for widely different comment periods. The process points to section 800.14(f), which fleshes out the details of consulting with tribes and specifies that the agency official and the ACHP must take tribal views into account in reaching a final decision.

ACHP Review of Objections Within the Process for Agency Use of the NEPA Process for Section 106 Purposes

36 CFR 800.8(c)(3) states that the "Council shall notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall enter into consultation in accordance with 800.6(b)(2) ...". This appears to contradict the court decision that the asserted power of the ACHP to reverse Federal agency determinations of effect exceeded the ACHP's legal authority under the Act. This was an oversight. The ACHP agreed that the referred section of the regulations needed to be edited to better comport with the *NMA v. Slater* decision and therefore added an amendment to incorporate into that section changes similar to those incorporated by the amendments to the review process for effect findings at sections 800.4(d) and 800.5(c).

Section 800.16(y)—State Permits Under Delegated Programs

It is difficult for us to understand the basis for the proposed rule change given that the rule's definition of "undertaking" was taken verbatim from the 1992 revisions to the NHPA. With regard to licensing, the appellant in the *NMA v. Fowler* case argued that Section 106, by its own terms, only applied to "Federal . . . agenc[ies] having authority to license any undertaking." 16 U.S.C. 470f. Accordingly, it argued that no matter how broadly Congress defined the term undertaking, Section 106 only deals with the subset of

undertakings that actually receive a license from a Federal agency, as opposed to a State agency. The appellants, and the court, saw Section 106 itself as placing a limit on the "undertakings" subject to its provision. The court also believed that the case of *Sheridan Kalorama Historical Association v. Christopher*, 49 F.3d 750 (D.C. Cir. 1995), barred it from a different interpretation. In that opinion, the court held that "however broadly the Congress or the [ACHP] define 'undertaking,' Section 106 applies only to: (1) 'any Federal agency having * * * jurisdiction over a proposed Federal or federally assisted undertaking'; and (2) 'any Federal * * * agency having authority to license any undertaking.'" Although the ACHP disagrees with the *NMA v. Fowler* interpretation of the NHPA, the ACHP is bound by the court's decision.

The ACHP should disclose contrary legal interpretations. This comment referred to the case of *Indiana Coal Council v. Lujan*, 774 F. Supp. 1385 (D.D.C. 1991), vacated in part and appeal dismissed, Nos. 91-5397, 91-5405, 91-5406, 1993 U.S. App. LEXIS 14561, 1993 WL 184022 (D.C. Cir. Apr. 26, 1993), appeal dismissed, No. 91-5398 (D.C. Cir. Dec. 2, 1993). In that case, the court held that permits issued by State agencies pursuant to a delegated authority from the Office of Surface Mining were undertakings requiring compliance with Section 106. Soon after that decision was issued, Congress amended the NHPA definition of "undertaking" to specifically include "those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency." 16 U.S.C. 470w(7). Some, including the ACHP, argue that Congress did this to codify the ruling in the *Indiana Coal Council* case. See 138 Cong. Rec. S17681 (Oct. 8, 1992). In fact, the *Indiana Coal Council*, the National Coal Association, and the American Mining Congress asked the D.C. Circuit to dismiss their appeal of the *Indiana Coal Council* case based on the 1992 amendment to the NHPA definition of "undertaking." As a result, the appeal was dismissed and the decision vacated in part by the D.C. Circuit because the 1992 amendments made the case moot.

A new section should be added to the regulations that specifically addresses "State and Local Delegated Programs." The ACHP should provide Federal agencies and the public with clear and unambiguous language concerning these programs and their level of consideration, consistent with the Federal Court ruling, under Section 106 of the Act. As stated in the NPRM, the

ACHP believes that Federal agency approval of, amendments or revisions to, and funding of delegated programs trigger Section 106 review. The ACHP does not believe a new section in the regulations would be required for such programs because it believes the already existing processes in those regulations can be used to adequately cover such Federal agency approvals and/or funding. Specifically, the delegated programs could be covered by Programmatic Agreements under section 800.14(b) of the regulations. The ACHP looks forward to working with the Department of the Interior, the Environmental Protection Agency, and other agencies in developing such agreements.

The proposed changes to the regulation itself at 36 CFR 800.16(y) are appropriate and consistent with the D.C. Circuit's opinion in *NMA v. Fowler*. However, the Preamble discussion of the rule is inappropriate (decision on whether there is an undertaking is up to the agency), improperly characterizes the nature of the Federal government's role in annual funding of State programs (while initial approval may be an undertaking, it is a leap to say each renewal, assessment or funding event will trigger Section 106), and is inconsistent with the ACHP's official position set forth in its brief before the court (regarding the agency having the final word on whether it has an undertaking). The discussion is not inappropriate since, while procedurally the agency makes the determination as to whether it has an undertaking, the ACHP has the right (and the expertise) to provide its opinion on that issue. Furthermore, the Office of Surface Mining (OSM) has long acknowledged that its approval, amendment, and at least the initial funding of State-delegated programs triggers Section 106 review. See *Indiana Coal Council*, 774 F.Supp. at 1400 (this portion of the opinion was not vacated by the D.C. Circuit). The ACHP looks forward to working with the affected agencies, historic preservation officers, industries, and other stakeholders in reaching an agreement for handling these programs under Section 106.

Objects to the suggestion that "For existing programs, this [compliance with section 106] could occur during renewal or periodic assessment of such programs." There will be no way to know that the delegation includes adequate and enforceable provisions until after the "renewal or periodic assessment" occurs at some uncertain date years in the future. Waiting on renewal or periodic reviews in such instances means that untold damage to

the Nation's heritage will occur in the intervening years. Improper delegations must immediately be rescinded until such time as the agency official has properly complied with section 106 and 36 CFR Part 800. While the ACHP desires to move quickly and reach adequate agreements on these programs, the ACHP does not have the authority to rescind other agencies' approvals of programs. The idea of pursuing an agreement at the moment of renewal or reassessment (to cover a delegated program as a whole) was mostly a practical recommendation, so that agencies that are nearing such stages would take advantage of such occasions (when they may be preparing to undergo some form of review process anyhow) to work on and resolve this issue.

Concerned with the ACHP's "opinion" that Federal agency approval and/or funding of such delegated programs does require Section 106 compliance by the Federal agency, as such programs are "undertakings" receiving Federal approval and/or Federal funding. This appears as an attempt to accomplish through the back door what the ACHP has been barred by the courts from doing through the front door. The ACHP is not aware of any court opinion barring its interpretation of such Federal approval and funding decisions as being undertakings subject to Section 106. The D.C. Circuit specifically mentioned this interpretation, without ruling on it, when it quoted the appellant's brief: "For example, although the NMA concedes that '[t]he Federal government's approval of a State's overall SMCRA permitting program may arguably be an action subject to Section 106, because the federal government contributes funds to the general administration of state permitting programs and approves those programs,' it contends that individual state mining permits do not fall within that section since 'the Federal government does not retain the authority to approve or reject any one mining project application.'" In any event, OSM has long acknowledged, and the U.S. District Court for the District of Columbia has ruled, that OSM approval, amendment, and at least the initial funding of delegated programs triggers Section 106 review. See *Indiana Coal Council*, 774 F.Supp. at 1400 (this portion of the opinion was not vacated by the D.C. Circuit).

Section 106 reviews should definitely be required for individual permits issued by state agencies under delegation by federal agencies. Our cities and counties receive large amounts of money wherein they are allowed to issue permits under

delegation by federal agencies (e.g., HUD programs). The ACHP wants to clarify that under certain Housing and Urban Development (HUD) programs, such as the Community Development Block Grant (CDBG) program, Federal statute specifically provides that States or local agencies act on behalf of HUD in meeting HUD's Section 106 responsibilities. Those HUD grant programs are not affected by the issue of delegated programs being addressed in these amendments, which pertain only to regulatory and permitting programs.

Rulemaking Process

Urges ACHP to engage in consultation with preservation stakeholders when developing a revised draft of the regulations, rather than drafting them behind closed doors, as was done with the current proposal. The ACHP engaged in the consultation required by the Administrative Procedure Act for rulemaking. It published the proposed amendments on the *Federal Register* and provided the public with 30 days in which to provide comments. In response to requests, this period was thereafter extended an additional 30 days. As reflected in this preamble, the ACHP seriously considered all public comments and, in response to those comments, edited the proposed amendments in several ways. Moreover, the ACHP membership, composed by representatives of various stakeholders in the process (including Federal agencies, the National Trust for Historic Preservation, the National Conference of State Historic Preservation Officers, citizen members, a Native Hawaiian organization representative and expert members), fully vetted the proposed amendments and changes to them. In the end, as explained above, the ACHP had to amend the regulations and respond in a timely manner to the court's order. Moreover, it is important to note that this rulemaking involved a fairly limited scope of issues.

Miscellaneous Issues

Several public comments addressed issues beyond the limited scope of this rulemaking. Again, this rulemaking was intended to respond primarily to the issues raised by the *NMA v. Slater* and *NMA v. Fowler* decisions regarding the authority of the ACHP to overturn agency effect determinations and the issue of delegated programs. The ACHP decided to respond to the following comments, even though they were not particularly germane to the present rulemaking. The ACHP may consider some of those issues in future rulemakings.

If the dispute is over eligibility for inclusion on the National Register, the Keeper should be included in the process. Several members of the public made this comment. However, it is unclear what was meant since the Section 106 regulations already provide for referral to the Keeper when an agency and SHPO/THPO disagree regarding the eligibility of a property for listing on the National Register of Historic Places. 36 CFR 800.4(c)(2). To the extent that the comment advocates that such referral be made when consulting parties other than the SHPO/THPO dispute a determination regarding a property's eligibility, the ACHP disagrees. The practice of agency and SHPO/THPO eligibility determinations has been long established in practice and in law (see 36 CFR 63.3), and there is no indication of such an arrangement having presented problems in the Section 106 process.

The ACHP rules contain no significance or materiality limitations, such as those contained in the National Environmental Policy Act that limit most of that statute's key provisions only to actions that might significantly affect the environment. In contrast, the ACHP Section 106 rules seek to require agencies to examine all effects of any intensity, whether or not the effects are significant. Where there is an alteration of a historic property, any diminishment of any aspect of its historic integrity, however measured and however great or small, can support a finding of adverse effect. While the NEPA statute itself contains the limiting factors of "major" Federal actions and "significant" effects, the NHPA does not. Regardless, the Section 106 regulations allow agencies to weed out at the very start of the process those undertakings that generically would not affect historic properties (Section 800.3(a)), and provides a shortened process for those undertakings that would not affect historic properties within their area of potential effects (Section 800.4(d)).

Opponents of the Section 4(f) review process claimed its protections were unnecessary because Section 106 was in place. Now the opponents of responsible procedure aim to significantly weaken Section 106. Section 4(f) could still be eliminated when the Transportation Act comes before Congress in January. If Section 4(f) is removed and Section 106 severely weakened, there will be no meaningful protection for significant historic resources. Several members of the public repeated this comment verbatim. The ACHP does not believe the amendments in this rulemaking "significantly weaken" the Section 106

process. Moreover, as of the date of this notice, Congress has not taken action on the legislation mentioned in these comments. Various versions of the bill are under consideration by the Congress. Due to the uncertainty of the actual legislation that may or may not be passed by Congress, the ACHP can only speculate on the eventual relationship between Section 106 and Section 4(f). Once Congress and the President have acted on the legislation, the ACHP will be able to assess the situation and determine whether any future regulatory action is needed.

Restrict the ability of agencies to exclude consulting parties in order to silence objections: This could be accomplished, for example, by allowing the SHPO/THPO or the ACHP to invite a consulting party to participate in the Section 106 review if the federal agency has rejected the party's request. Several members of the public endorsed this concept. In light of the limited scope of this rulemaking and the fact that this issue was not identified in the NPRM, the ACHP does not believe it is appropriate to address this issue in the final rulemaking. The ACHP also notes that the current provision was the subject of extensive comment and negotiation in the previous rulemaking and any alteration of it would require thorough public airing.

Very concerned with the ACHP's rules extending the protections of Section 106 to properties only "potentially eligible" for the National Register of Historic Places. Only those properties actually listed on the National Register or formally determined eligible for such listing by the Keeper should be within the scope of Section 106. This very same issue was raised in the *NMA v. Slater* case. That court sided with the ACHP's interpretation of the NHPA that the properties within the scope of Section 106 include those that meet the criteria for listing on the National Register, even though they have not been formally determined eligible by the Keeper and that the process for identifying them in the Section 106 regulations is appropriate. As the ACHP stated in a previous preamble to the Section 106 regulations (which the court specifically cited approvingly in its decision): "Well-established Department of the Interior regulations regarding formal determinations of eligibility specifically acknowledge the appropriateness of section 106 consideration of properties that Federal agencies and SHPOs determine meet the National Register criteria. See 36 CFR 63.3. * * * Not only does the statute allow this interpretation, but it is the only

interpretation that reflects (1) the reality that not every single acre of land in this country has been surveyed for historic properties, and (2) the NHPA's intent to consider all properties of historic significance. It has been estimated that of the approximately 700 million acres under the jurisdiction or control of Federal agencies, more than 85 percent of these lands have not yet been investigated for historic properties. Even in investigated areas, more than half of identified properties have not been evaluated against the criteria of the National Register of Historic Places. These estimates represent only a part of the historic properties in the United States since the section 106 process affects properties both on Federal and non-Federal land. Finally, the fact that a property has never been considered by the Keeper neither diminishes its importance nor signifies that it lacks the characteristics that would qualify it for the National Register." 65 FR 77705.

IV. Impact Analysis

The Regulatory Flexibility Act

The ACHP certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments in their proposed version only impose mandatory responsibilities on Federal agencies. As set forth in Section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the ACHP a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the course of a Federal agency's compliance with Section 106 of the NHPA, must be considered and evaluated by that Federal agency.

The Paperwork Reduction Act

The amendments do not impose reporting or record-keeping requirements or the collection of information as defined in the Paperwork Reduction Act.

The National Environmental Policy Act

It is the determination of the ACHP that this action is not a major Federal action significantly affecting the environment. Regarding the National Environmental Policy Act (NEPA) documents for the rule that is being amended, as a whole, please refer to our Notice of Availability of Environmental Assessment and Finding of No Significant Impact at 65 FR 76983 (December 8, 2000). A supplemental Environmental Assessment and Finding of No Significant Impact are not deemed

necessary because (1) these amendments do not present substantial changes in the rule that are relevant to environmental concerns; (2) most of the amendments are a direct result of a court order; and (3) there are no significant new circumstances or information relevant to environmental concerns and bearing on the rule or its impacts.

Executive Orders 12866 and 12875

The ACHP is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The ACHP also is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994.

The Unfunded Mandates Reform Act

The amendments do not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and are not a significant Federal intergovernmental mandate. The ACHP thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

Executive Order 12898

The amendments do not cause adverse human health or environmental effects, but, instead, seek to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by the Section 106 process seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The Section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The ACHP considers environmental justice issues in reviewing analysis of alternatives and mitigation options, particularly when Section 106 compliance is coordinated with NEPA compliance.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Council will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 5, 2004.

V. Text of Amendments

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Inter-governmental relations, Surface mining.

For the reasons stated in the preamble, the Advisory Council on Historic Preservation amends 36 CFR part 800 as set forth below:

PART 800—PROTECTION OF HISTORIC PROPERTIES

1. The authority citation for part 800 continues to read as follows:

Authority: 16 U.S.C. 470s.

2. Amend § 800.4 by revising paragraph (d) to read as follows:

§ 800.4 Identification of historic properties.

Results of identification and evaluation.

(1) No historic properties affected. If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or

forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv) (A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency

official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) Historic properties affected. If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

3. Amend § 800.5 by revising paragraphs (c)(1), (2) and (3) to read as follows:

§ 800.5 Assessment of adverse effects.

(1) Agreement with, or no objection to, finding. Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) Disagreement with finding. (i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or

Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) Council review of findings.

(i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii) (A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of Agency responses to Council opinions on their findings of no adverse effects.

The Council shall make this information available to the public.

* * * * *

■ 4. Amend § 800.8 by revising paragraph (c)(3) to read as follows:

§ 800.8 Coordination with the National Environmental Policy Act.

* * * * *

(3) Resolution of objections. Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

* * * * *

■ 5. Amend § 800.14 by revising paragraph (c) to read as follows:

§ 800.14 Federal agency program alternatives.

* * * * *

Exempted categories.

(1) Criteria for establishing. The Council or an agency official may propose a program or category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) Public participation. The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council review of proposed exemptions. The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted.

Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of

historic properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of

this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The proponent of the exemption shall publish notice of any approved exemption in the Federal Register.

* * * * *

■ 6. Amend § 800.16 by revising paragraph (y) and adding paragraph (z) to read as follows:

§ 800.16 Definitions.

* * * * *

(Y) *Undertaking* means a project, activity, or program funded in whole or

in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) *Senior policy official* means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

Dated: June 30, 2004.

John M. Fowler,

Executive Director.

[FR Doc. 04-15218 Filed 7-2-04; 8:45 am]

BILLING CODE 4310-10-P

Additional Resources

Advisory Council on Historic Preservation – The ACHP Web site provides current preservation news and links to laws and regulations concerning heritage preservation.

<http://www.achp.gov>

DENIX – is the central platform and information clearinghouse for environment, safety and occupational health (ESOH) news, information, policy, and guidance. Serving the worldwide greater Department of Defense (DoD) community, DENIX offers ESOH professionals a vast document library, a gateway to web-based environmental compliance tools, an interactive workgroup environment, a variety of groupware tools and an active membership community numbering thousands.

<http://www.denix.osd.mil>

ICRMP Toolbox on DENIX

<https://www.denix.osd.mil/denix/Public/ESPrograms/Conservation/Legacy/ETB/EtbWelcome.htm>

EPA – The EPA Web site provides links to EPA news, topic, laws and regulations, and information sources.

<http://www.epa.gov>

Guardnet

<http://guardnet.ngb.army.mil>

Legacy – Legacy web site explains a Legacy project may involve regional ecosystem management initiatives, habitat preservation efforts, archaeological investigations, invasive species control, Native American consultations, and/or monitoring and predicting migratory patterns of birds and animals.

<http://www.dodlegacy.org>

National Park Service (general cultural resource page) – The National Park Service, *Links to the Past* Web page is a resource to find information on cultural resource subjects and cultural resource programs.

<http://www.cr.nps.gov>

National Park Service (National Register) – The NRHP Web site provides links to assist in registering a property to the NRHP among other various preservation topics and links.

<http://www.cr.nps.gov/nr>

National Trust for Historic Preservation – The NTHP has an informative Web site of how the private sector preserves America's diverse historic places and communities through education, advocacy, and resources.

<http://www.nthp.org>

Secretary of the Interior's Standards for the Treatment of Historic Properties – The Secretary of the Interior's Standards for Rehabilitation Web site describes the intent of the Standards, which is to assist the long-term preservation of a property's significance through the preservation of historic materials and features.

<http://www2.cr.nps.gov/tps/tax/rhb/index.htm>

U.S. Army Corps of Engineers (Seattle District) – The U.S. Army Corps of Engineers lists links from civil works to historic preservation where they list managing and engineering solutions.

<http://www.nws.usace.army.mil>

U.S. Army Environmental Center – The USAEC Web site provides a link to the cultural resources that include Native American affairs, historic buildings and landscapes, archaeology, and the Army Historic Preservation Campaign Plan.

<http://aec.army.mil/usaec/>

Bureau of Indian Affairs – The Bureau of Indian Affairs (BIA) Web site provides links to Tribal agencies and Tribal leaders, among other helpful links.

<http://www.doi.gov/bureau-indian-affairs>

The Layaway Economic Analysis Tool Software – The mission of the Cost and Economics is to provide the Army decision-makers with cost, performance and economic analysis in the form of expertise, models, data, estimates and analyses at all levels. Links include ACEIT, AMCOS, Cost and Economic Analysis, Cost Management/ABC.

[http://www.ceac.army.mil/.](http://www.ceac.army.mil/)

The website for the Maryland State Historic Preservation Office, the Maryland Historical Trust. This website provides links for state archaeological site forms and historic building survey forms.

[Maryland Historical Trust](#)