

measures mentioned previously in this document.

NMFS has determined that the proposed activity would result in the harassment of small numbers of California sea lions and Pacific harbor seals, and that the takings will have no more than a negligible impact on these marine mammal stocks. Accordingly, NMFS has issued an IHA to BMMI for the harassment of small numbers of California sea lions and Pacific harbor seals incidental to dredging around Pier 39, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

#### Authorization

NMFS has issued a 1-year IHA to BMMI for the take, by harassment, of small numbers of California sea lions and Pacific harbor seals incidental to maintenance dredging around I, J, and K Docks at Pier 39 in San Francisco, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Dated: November 14, 2005.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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housing units, associated structures, and landscape features.

**Authority:** 36 CFR 800.14.

**DATES:** The program comment went into effect on November 18th, 2004.

**ADDRESSES:** Address comments to: HQ AF/ILE, Environmental Programs, ATTN: Lt Col Douglas Burkett, 1260 Air Force Pentagon, Washington DC, 20030-1260 (AIR FORCE) Commander, Naval Facilities Engineering Command (BDD), ATTN: Dr. Jay Thomas, 1322 Patterson Ave SE Ste 1000, Washington Navy Yard DC 20374-5065.

**FOR FURTHER INFORMATION CONTACT:** Lt Col Douglas Burkett at (703) 604-0632 or Dr. Jay Thomas at (202) 685-9196.

**SUPPLEMENTARY INFORMATION:** Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, requires Federal agencies to consider the effects of these undertakings on historic properties and provide the Council a reasonable opportunity to comment with regard to such undertakings. The Council issued the regulations that set forth the process through which Federal agencies may comply with these requirements. Those regulations are codified under 36 CFR part 800 ("Section 106 regulations"). The Section 106 regulations, under 36 CFR 800.14(e), provide that an agency may request the Council for a "Program Comment" allowing it to comply with Section 106 for a category of undertakings in lieu of conducting a separate review for each individual undertaking under the regular consultation process.

#### I. Background

According to the requirements for obtaining a Program Comment, the Navy and Air Force formally requested the Council comment on Capehart and Wherry Era family housing and associated structures and landscape features in lieu of requiring separate reviews under §§ 800.4 through 800.6 of the Section 106 regulations for each individual undertaking. The Navy and Air Force identified the category of undertakings as maintenance, repair, layaway, mothballing, privatization and transfer out of federal agency ownership, substantial alteration through renovation, demolition, and demolition and replacement, affecting Navy and Air Force family housing built between 1949 and 1962 termed 'Capehart and Wherry'. The Air Force and Navy also specified the likely effects that these management actions would have on historic properties and the steps the Air Force and Navy would take to ensure that the effects are taken

into account. The Air Force and Navy included in their request to the Council the public comments that it received from a 60-day public comment opportunity provided through an earlier notice (69 FR 48462, August 10, 2004). The Council subsequently published a notice of intent to issue the Program Comment (69 FR 54763, September 10, 2004) and notified the State Historic Preservation Officers (SHPOs), the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (NTHP), Tribal Historic Preservation Officers (THPOs), and the National Association of Tribal Historic Preservation Officers, and requested their views on the Air Force and Navy's proposed Program Comment. During its November 18, 2004 business meeting, the Council membership (with the Department of Defense recusing itself) voted unanimously to approve and issue the Program Comment found at the end of this notice. The vote was 16 in favor of approving and issuing the Program Comment, 0 votes against, and 1 abstention (the Department of Defense), with 3 voting members absent.

Neither the Council nor the Air Force and Navy have engaged in consultation with Indian Tribes and Native Hawaiian organizations, pursuant to 36 CFR 800.14(e)(4), since such consultation is not warranted. All Air Force and Navy actions considered under this Program Comment will be undertaken on Air Force and Navy property. The Program Comment will not affect historic properties of religious and cultural significance, regardless of location, to any Indian tribe or Native Hawaiian organization since any Capehart and Wherry actions that would affect these types of properties are specifically excluded under the Program Comment.

#### II. Response to Public Comments

Clarify a separate step for identifying properties of particular importance. The proposed comment does not include a specific process for identifying properties of particular importance. This Program Comment now includes a specific process of identifying properties of particular importance. The Air Force and Navy will notify the Council, NCSHPO, and NTHP whether any of these properties are of particular importance and permits an opportunity to review the findings.

Report for the General Public: The requirement to prepare a report for the general public should be separated out from the requirement to revise the historic context study, and should be more clearly delineated as a separate deliverable item. The Program Comment

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Program Comment for Capehart and Wherry Era Housing and Associated Structures and Landscape Features (1949-1962)

**AGENCY:** Department of the Navy, Department of the Air Force, and Department of the Army.

**ACTION:** Notice of Approval of Program Comment on Air Force and Navy Capehart and Wherry Era Housing.

**SUMMARY:** On November 18th, 2004 the Advisory Council on Historic Preservation (Council) approved a program comment that facilitates the Navy's and Air Force's compliance with the National Historic Preservation Act, with regard to management of their inventories of Capehart and Wherry Era

reflects two distinct deliverables; the resulting publicly accessible context study will be placed on a public web site and copies of the report will be provided to all SHPOs, the NCSHPOs, the Council, and the NTHP.

The Air Force and Navy should issue a specific directive to installations requiring consideration of the design guidelines in order to implement the program comment. The intent of the Program Comment is that the Navy and Air Force apply the design guidelines consistently at any installation where Capehart and Wherry units will be retained. In accordance with 36 CFR 800.14(e)(6), the Council may withdraw the Program Comment if it determines that the consideration of historic properties is not being carried out in a manner consistent with the Program Comment.

Properties of "Particular Importance"—Require a commitment to some degree of preservation. The Program Comment reflects both a process for determining properties of particular importance as well as a commitment to consider the preservation of these properties through continued use as military housing, within funding and mission constraints.

Affirmatively encourage the use of historic preservation tax credits. The Program Comment obliges the Navy and Air Force to advise developers involved in housing privatization initiatives that Wherry and Capehart properties may be eligible for historic preservation tax credits.

### III. Text of the Program Comment

#### 1. Introduction

This Program Comment, adopted pursuant to 36 CFR 800.14(e), demonstrates Department of the Air Force (Air Force) and Department of the Navy (Navy) compliance with their responsibilities under Section 106 of the National Historic Preservation Act with regard to the following actions in the management of the Wherry and Capehart Era family housing: Maintenance, repair, layaway, mothballing, privatization and transfer out of federal agency ownership, substantial alteration through renovation, demolition, and demolition and replacement of Wherry and Capehart Era housing, associated structures and landscape features that may be eligible for listing on the National Register of Historic Places.

#### 2. Treatment of Wherry and Capehart Properties

##### A. Eligibility

The Department of the Army (Army) conducted a historic context of its Wherry and Capehart properties and documented these in a report entitled "For Want of a Home: A Historic Context for Wherry and Capehart Military Family Housing". On May 22, 2001, the Army sponsored a symposium on Wherry and Capehart era housing management as it related to historic preservation. The symposium was attended by preservation experts, including the National Trust for Historic Preservation (Trust), the National Conference of State Historic Preservation Officers (NCSHPO), the Advisory Council on Historic Preservation (ACHP), and nationally recognized experts in the field of historic preservation from academia and industry. Symposium participants recommended a programmatic approach to complying with Section 106, and these approaches were part of the Army's Program Comment, which was approved by the ACHP in 2002 (67 FR 39332; June 7, 2002).

The Air Force and the Navy have gathered data on their inventory of Wherry and Capehart properties which will be appended to the Army's context study, as outlined below, to provide a comprehensive understanding of the Department of Defense (DoD) inventory for this property type. As with the Army, the Air Force and the Navy consider their inventory of Wherry and Capehart properties, including any associated structures and landscape features, to be eligible for the National Register of Historic Places for the purposes of Section 106 compliance.

##### B. Treatment

The Air Force and the Navy have requested a Program Comment as a service-wide Section 106 compliance action related to management of Wherry and Capehart Era housing, associated structures and landscape features. This programmatic approach will facilitate management actions for maintenance, repair, layaway, mothballing, privatization and transfer out of Federal agency ownership, substantial alteration through renovation, demolition, and demolition and replacement of Wherry and Capehart Era housing, associated structures and landscape features. Such actions present a potential for adverse effects to historic properties.

Based on the Program Comment previously approved for the Army for this property type, and following meetings with the ACHP, the Trust and

NCSHPO, the Air Force and the Navy agree to the following six-step approach to the treatment of its Wherry and Capehart properties:

(i) The Air Force and the Navy will:

(a) Revise the Army's historic context, "The Wherry and Capehart Era Solutions to the Postwar Family Housing Shortage (1949–1962): A Historic Context", to include information pertinent to Air Force and Navy bases where this information differs from that provided in the Army's context study, including information on Navy and Air Force Capehart and Wherry Era Housing architects, sponsors and bidders, and projects. The expanded context study will provide a more complete picture of Wherry and Capehart Era family housing across DoD, and

(b) upon completion of the revised context study, the Air Force and the Navy will use it and any resulting oral histories recorded in accordance with section II(B)(vi), below, to prepare a report suitable for release to the general public. The report to the public will extract that information which may be deemed sensitive or inappropriate for release to the public; the resulting context study will be placed on a publicly accessible Web site and copies of the report will be provided to all the SHPOs, NCSHPO, the Trust and the ACHP.

(ii) The Navy and Air Force will review the results of the expanded and revised context study and determine whether any of those properties identified under Section II(B)(i)(a) are of particular importance. The Navy and Air Force will notify the Council of the results of this review, and the Council will forward the results to the NCSHPO, and the Trust.

(iii) The Air Force and Navy will use, or modify for their own use, the Army's design guidelines: "Neighborhood Design Guidelines for Army Wherry and Capehart Housing". Modified design guidelines will be provided to ACHP for review. Copies of the Air Force and Navy guidelines will be provided to the NCSHPO, the Trust and the ACHP. These Neighborhood Design Guidelines will be distributed by Headquarters, Air Force and Navy to those offices that manage and maintain this housing type and they will be encouraged to consider the design guidelines in planning actions that affect their Wherry and Capehart Era housing, associated structures and landscape features.

(iv) For Wherry and Capehart properties that have been determined to be of particular importance, as defined in the revised context study, the Air Force and the Navy will:

(a) Consider the need to conduct additional historical documentation, and

(b) Within funding and mission constraints, consider the preservation of these properties through continued use as military housing.

(v) The Air Force and the Navy will advise developers involved in housing privatization initiatives that Wherry and Capehart properties may be eligible for historic preservation tax credits.

(vi) The Air Force and the Navy will attempt to locate and conduct oral interviews with military families who lived in Wherry and Capehart housing (which may include Army families), and other people who were involved with design and construction of Capehart and Wherry Era housing. Prior to conducting any interviews, the Air Force and the Navy will seek advice from appropriate government offices such as the Library of Congress' Veterans History Project and the military service historical centers to develop a set of appropriate interview questions and proper formats in which interviews would be recorded. Upon completion of the oral histories, the Air Force and the Navy will provide a copy of all written and recorded documentation to the Library of Congress.

### 3. Applicability

This Program Comment does not apply to the following properties that are listed, or eligible for listing, on the National Register of Historic Places:

- (i) Archeological sites,
- (ii) Properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations, or
- (iii) Historic properties other than Air Force and Navy Wherry and Capehart Era housing, associated structures and landscape features.

### 4. Schedule for Completion

(i) Within 12 months from Council approval of the Program Comment, the Air Force and Navy shall complete:

(a) The expanded and revised context study for Capehart and Wherry Era housing as described in Section II(B)(i)(a), above;

(b) Review of the context study for properties of particular importance as described in II(B)(ii), above; and

(c) Adoption of the design guidelines as described in Section II(B)(iii), above.

(ii) Within 24 months from Council approval of the Program Comment, the Navy and Air Force shall complete:

(a) Its consideration of properties of particular importance as described in Section II(B)(iv), above;

(b) Completion of the oral history segment of the mitigation, as described in Section II(B)(vi), above, and

(c) Completion of the context study suitable for release to the general public, as described in Section II(B)(i)(b), above.

### 5. Effect of Program Comment

The ACHP believes that this six-step approach will ensure that the Air Force and the Navy take into account the effects of management of their Wherry and Capehart era housing. By following this comment and outlined six-step approach, the Air Force and the Navy will have met their responsibilities for compliance under Section 106 regarding management of their Wherry and Capehart era housing. Accordingly, Air Force and Navy bases will not have to follow the case-by-case Section 106 review process for each individual management action.

The Air Force and the Navy may carry out management actions prior to the completion of all of the six treatment steps outlined above, so long as such management actions do not preclude the eventual successful completion of those six steps.

This Program Comment will remain in effect until such time as the Air Force or the Navy determines that such comments are no longer needed and notifies ACHP, in writing, or the ACHP determines that the consideration of Wherry and Capehart properties is not being carried out in a manner consistent with this Program Comment. The ACHP may withdraw this Program Comment in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, the Air Force and the Navy would comply with the requirements of 36 CFR 800.3 through 800.7 for each individual management action.

The ACHP Membership approved this Program Comment on November 18, 2004.

**Lawrence Shade,**

*Acting, Air Force Federal Register Liaison Officer.*

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed Ruter-Hess Reservoir Expansion Project, Parker, CO

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) Omaha District is preparing a Supplemental Environmental Impact Statement (EIS) to analyze the direct, indirect and cumulative effects of enlarging the Ruter-Hess Reservoir, currently under construction in Parker, CO. The current project was authorized in February 2004 with Corps Permit #199980472. The basic purpose of the proposed action is the same as defined in the original EIS, which is to provide a safe, adequate and sustainable municipal water supply to Parker Water and Sanitation District (PWSD), Parker, CO that is capable of meeting the peak demands for the District's service area for the next 50 years. In addition, the purpose for enlarging the reservoir is to provide peaking storage of Denver Basin groundwater for selected South Metro Denver area water providers and to assist in sustaining the Denver Basin Aquifer. The construction of the proposed project would result in additional temporary and permanent impacts to wetlands and other Waters of the United States, requiring a new section 404 permit. To familiarize the public and interested organizations with the project and potential environmental issues that may be involved; the Corps has prepared a Scoping Document for the project. This document includes a project description, preliminary list of alternatives and various environmental/resource issues that will be addressed in the Supplemental EIS. Copies of the Scoping Document will be available at the public scoping meetings or can be requested by mail. The Supplemental EIS will be prepared according to the Corps' procedures for implementing the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4332(2)(C), and consistent with the Corps' policy to facilitate public understanding and review of agency proposals.

**DATES:** Submit comments by December 19, 2005.

**ADDRESSES:** Send written comments regarding the proposed action and Supplemental EIS to Rodney Schwartz, EIS Project Manager, U.S. Army Corps of Engineers, 12565 West Center Road, Omaha, NE., 68144-3869 or via e-mail: [Rodney.J.Schwartz@usace.army.mil](mailto:Rodney.J.Schwartz@usace.army.mil). Requests to be placed on the mailing list should also be sent to this address.

**FOR FURTHER INFORMATION CONTACT:** Rodney Schwartz, EIS Project Manager, Corps, Omaha District at (402) 221-4143.

**INFORMATION:** Parker Water and Sanitation District proposes to enlarge