



Preserving America's Heritage

March 2, 2012

Ms. Susan Carroll
For Former Permit Holders
Ms. Sally Gould
For North Beach Camp Private Camp Owners

Ref: *Proposed Demolition of Five North Beach Camps in Cape Cod National Seashore
Chatham, Massachusetts*

Dear Ms. Carroll and Ms. Gould:

Since August 2011, Advisory Council on Historic Preservation (ACHP) staff has had many communications with you, the National Park Service (NPS), the Massachusetts State Historic Preservation Officer (SHPO), and other consulting parties regarding the review of the proposed demolition of the five North Beach Camps in Cape Cod National Seashore pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). The Act and the regulations require that the federal agency official, in this case the Superintendent of the National Seashore, complete the Section 106 review process defined in the regulations prior to the approval of the expenditure of federal funds on the undertaking. In his letter to the ACHP dated February 17, 2012, the Superintendent formally concluded the Section 106 process in accordance with 36 C.F.R. § 800.4(d)(1)(iv)(C) by responding to our letter of February 3, 2012, and providing a summary of his decision reaffirming his determination that no historic properties will be affected by the undertaking.

Because of the significant public controversy regarding the proposed undertaking, we formally notified the Director of the National Park Service (NPS) on October 17, 2011, that we would participate in the Section 106 consultation regarding this undertaking. Through our participation we advised the Superintendent to extend the timeline for approval of the undertaking, and reminded him to make a reasonable and good faith effort to determine whether historic properties may be affected by the undertaking and consult with the full range of parties in accordance with 36 C.F.R. § 800.2(c)(5). The additional time and efforts made by the NPS since then have largely addressed those issues.

In response to a specific point raised in your letter, we wish to emphasize that in accordance with our regulations, it is indeed the responsibility of the federal agency official (again, in this case the Superintendent) to determine whether the actions it will carry out meet the "reasonable and good faith" identification standard and to conclude the Section 106 review with a finding of effect. In this case, the

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Superintendent found that these actions would result in no historic properties affected. Through his February 17 letter, the Superintendent has explained at length how he considered the possibility of the existence of a district and why he believes a finding of no historic properties affected is still appropriate. Understand that the factors for setting "reasonable and good faith" identification efforts specifically include "past planning, research and studies, and the likely nature and location of historic properties within the area of potential effects." 36 C.F.R. § 800.4(b)(1). We cannot say that, under the circumstances, the Superintendent's identification efforts or ultimate determination of no historic properties affected failed to meet the "reasonable and good faith" standard. We therefore consider the Section 106 review for this undertaking to have concluded.

While we understand that this outcome is not satisfactory to you, we remind you that even if the North Beach camps or other properties had been determined to be "historic properties" in accordance with 36 CFR 800.4 of our regulations and potentially adversely affected by the undertaking, the NPS may still have determined it necessary to demolish the camps consistent with the requirements of the Section 106 process to consider, but necessarily preclude, effects to historic properties. In the end, the NPS' responsibility is to take into account the potential effects of the undertaking on historic properties and afford the ACHP a reasonable opportunity to comment on the undertaking, which we believe was achieved through the Section 106 review process.

Sincerely,



Reid J. Nelson
Director
Office of Federal Agency Programs