

Memorandum of Agreement
Among
The United States Army and the New Mexico State Historic Preservation Officer
Regarding the
Effects of BRAC Reduced Maintenance
On the
Fort Wingate Depot Activity, McKinley, County, New Mexico

WHEREAS, the United States Army (Army) Fort Wingate Depot Activity (FWDA) was selected for closure under the 1988 Base Realignment and Closure Act (BRAC) (Pub. L. No. 100-256, 10 U.S.C. §2687 note); and

WHEREAS, the Army has had ongoing post-closure environmental remediation efforts since FWDA ceased operation in 1992 that will continue until the property is fully transferred out of Army control to another Federal agency; and

WHEREAS, the built infrastructure at FWDA has received BRAC-mandated reduced maintenance (Undertaking) in keeping with Army standards since BRAC; and

WHEREAS, FWDA constitutes a National Register of Historic Places eligible historic district with a period of significance from its initial construction in 1942 to the end of the Vietnam War in 1975 and is significant under Criterion A for its association with the mid-twentieth century American military industrial complex and under Criterion C for its architectural design values as true representative examples of International Style/Moderne structures in the administration area; and

WHEREAS, the Area of Potential Effect (APE) of the Undertaking is the entire area of the installation under Army control; and

WHEREAS, the Undertaking has resulted in deterioration of the historic buildings and structures within the APE, diminishing the characteristics of these properties that qualify them for inclusion on the National Register of Historic Places; and

WHEREAS, continuing deterioration resulting from the Undertaking will require demolition of select buildings and structures as safety issues arise during the term of this agreement; and

WHEREAS, the Undertaking constitutes an Adverse Effect under 36 CFR 800.5; and

WHEREAS, the 2006 Advisory Council on Historic Preservation Program (ACHP) Comments on Ammunition Storage Facilities has mitigated adverse effects to all earthen-covered ammunition magazines (igloos) and above-ground storage magazines; and

WHEREAS, a 1986 Programmatic Agreement Between the Army and the National Council of SHPOs has mitigated adverse effects on all World War II Temporary Wood structures at FWDA; and

WHEREAS, the Army has invited the Navajo Nation and the Pueblo of Zuni, the ultimate recipients of the property as mandated by Congress, to consult and concur in this agreement; and

WHEREAS, the Navajo Nation and the Pueblo of Zuni have expressed an interest in reuse of the igloos and not any other FWDA historic building or structure; and

WHEREAS, the Army has provided interested members of the public opportunities to comment on the adverse effects to historic properties through the FWDA website; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the Army has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the Army and the New Mexico Historic Preservation Officer (SHPO) agree that the Undertaking shall be implemented in accordance with the following stipulations to mitigate the Adverse Effect of the Undertaking on the Buildings and Structures of FWDA:

STIPULATIONS

The Army shall ensure that the following measures are carried out:

I. MITIGATION FOR THE ADVERSE EFFECTS FROM REDUCED MAINTENANCE

A. **Historic American Landscape Survey (HALS).** The Army shall complete a National Park Service (NPS) HALS documentation of FWDA within five years of the signing of this agreement.

1. The HALS shall document *one* of each of the following types of FWDA building/structure/object; Headquarters Building, Officer's Quarters, Machine Shop, Maintenance Shop, Carpenter Shop, Dispensary, Fire Station, Warehouse, WWII Temporary, Lunchroom, Dunnage Building, Rail Loading Dock, Ammunition Storage Igloo, Above-Ground Magazine and Safety Shelter.
 - a. Each structure listed in I A (1) shall have large-format black-and-white images meeting NPS standards. Digital scans of the images shall be forwarded to SHPO for a 15-day review via e-mail. Once SHPO concurs the images adequately document an individual resource, demolition of that type of resource may proceed when required by safety issues.
 - b. The HALS documentation shall also digitally photograph significant features of FWDA, including, but not limited to; natural landscape features, typical archeological features such as the Pueblo ruins, vistas toward Church Rock, graffiti inside igloos, entrance gate/bridge, the road/ rail systems, the locomotive engine and significant signage. The digital images shall meet all NPS standards and shall be included in the report. Once digital photography is complete on a structure-by structure basis, any non-archeological historic property of that type may be altered or demolished.
 - c. The written narrative shall address the pre-history of the site, its relationship to the natural features of the area, the Army's relationship with the site prior

to FWDA, the role of FWDA in the larger WWII military/industrial complex and the cultural/ethnographic landscape during FWDA construction and operation.

- d. As-built drawings shall be incorporated into the HALS report.
2. The Army shall provide the SHPO with a 30-day review and comment period on each draft prior to submission to the NPS.
3. SHPO, Navajo Nation, Pueblo of Zuni, New Mexico universities, area schools and libraries shall be provided with copies of the HALS documentation on archival CDs in jewel cases and one hard copy on archival bond paper.

B. Popular Report. The HALS documentation shall be distilled into a popular report to be completed within five years of signing of this agreement.

1. The Army shall provide the SHPO with a 30-day review and comment period on each draft of the report until the Army and SHPO concur it is ready for publication.
2. The printed report shall be perfect bound, at least 8.5 x 11 inches in size and a minimum of 100 pages in length. A minimum of 100 copies shall be printed.
3. The Navajo Nation and Pueblo of Zuni will be consulted on photographs illustrating landscape or natural resource features.
4. Printed and electronic copies shall be distributed to the SHPO, Navajo Nation, Pueblo of Zuni, New Mexico universities, area schools and libraries.

II. DURATION

This agreement shall remain in full force and effect for five years from signature of both agencies or until all mitigation stipulations have been met, whichever comes first.

III. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the Army shall halt work in the immediate vicinity until the resources can be identified and documented. The Army will make reasonable efforts to avoid, minimize, or mitigate adverse effects on those historic properties in consultation with the SHPO, the Navajo Nation and the Pueblo of Zuni.

If Native American human remains, funerary objects, sacred objects or objects of cultural patrimony are encountered, the Army will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations at 43 C.F.R § 10.

IV. MONITORING AND REPORTING

Each year following the execution of this agreement until it expires or is terminated, the Army shall provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Army's efforts to carry out the terms of this agreement.

V. DISPUTE RESOLUTION

Should any signatory to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Army shall consult with such party to resolve the objection. If the Army determines that such objection cannot be resolved, FWDA shall:

1. Forward all documentation relevant to the dispute, including the Army's proposed resolution, to the ACHP. The ACHP shall provide the Army with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Army shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. The Army will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the 30 calendar day time period, the Army may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Army shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the PA, and provide them and the ACHP with a copy of such written response.
3. The Army's responsibilities to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.
4. Should any member of the public raise a timely and substantive objection pertaining to the manner in which the terms of this agreement are carried out, at any time during its implementation, the Army shall take the objection into account by consulting with the objector to resolve the objection. When the Army responds to an objection, it shall notify the consulting parties of the objection and the manner in which it was resolved. The Army may request the assistance of a consulting party to resolve an objection.

VI. ANTI-DEFICIENCY ACT

The Army obligations under of this agreement are subject to the availability of appropriated funds, and the stipulations of this agreement are subject to the provisions of the Anti-Deficiency Act. The Army will make reasonable and good faith efforts to secure the necessary funds to implement this agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Army's ability to implement the stipulations of this agreement, the Army will consult in accordance with the amendment and termination procedures of this agreement.

VII. AMENDMENTS

This agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VIII. TERMINATION

If any signatory to this agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the agreement upon written notification to the other signatories.

Once the agreement is terminated, and prior to work continuing on the Undertaking, the Army must either execute a new agreement pursuant to 36 CFR § 800. Alternatively, FWDA may carry out consultation in accordance with 36 CFR 800.2-800.6 for individual undertakings, or consult to execute a new agreement pursuant to 36 CFR 800. FWDA shall notify the signatories as to the course of action it will pursue.

IX. COMPLIANCE WITH OTHER LAWS

No provision of this agreement shall be deemed to waive the provisions of Federal law, including, but not limited to other portions of the NHPA, ARPA, and NAGPRA.

Execution of this agreement and implementation of its terms evidence that the Army has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.