

Section 106 Consulting Parties Meeting  
Sacramento Peak Observatory  
Wednesday, June 20, 2018  
2:00 p.m. – 3:30 p.m. (EDT)

#### Attendees

**National Science Foundation (NSF):** Caroline Blanco (Assistant General Counsel/Federal Preservation Officer, Office of the General Counsel), Karen Pearce (Senior Legislative Affairs Specialist, Office of Legislative and Public Affairs), Dave Boboltz (Program Director, Division of Astronomical Sciences), Richard Green (Division Director, Division of Astronomical Sciences), Elizabeth Pentecost (Project Administrator, Division of Astronomical Sciences), Kristen Hamilton (Environmental Compliance Officer, Office of the General Counsel)

**CH2M HILL/Jacobs (Jacobs):** Lori Price (Senior Cultural Resource Consultant), Sara Jackson, (Project Coordinator)

**Apache Point Observatory (APO):** Mark Klaene (Site Operations Manager), Nancy Chanover, (Director of the 3.5M telescope)

**New Mexico Dept of Cultural Affairs Historic Preservation Division/State Historic Preservation Office (SHPO):** Michelle Ensey (Deputy State Historic Preservation Officer and State Archaeologist), Lynette Pollari (Historic Architect), Pilar Cannizzaro (Preservation Planning Manager), Steven Moffson (State National Register Coordinator)

**National Solar Observatory (NSO):** Rex Hunter (Business Manager)

**U.S. Forest Service (USFS):** Bill Sapp (Lincoln Forest Archaeologist/(Acting) Regional Tribal Relations Program Manager)

**Advisory Council on Historic Preservation (ACHP):** Charlene Vaughn  
Keith Morin, individual  
Kevin Reardon, individual

#### **Discussion of Draft Programmatic Agreement:**

Introductions and Stipulation II.A. Documentation of Actions Demonstrating Compliance with this PA

- Caroline opened the meeting with introductions and explained that comments on the Draft Programmatic Agreement (Draft PA) were received from Bill Sapp of the USFS. In response to one of Bill's comments, Caroline mentioned NSF's earlier agreement (via email response) to include the USFS as a recipient of updates referred to in Stipulation II.A. of the Draft PA.

Stipulation I.B.3. NSF Funding of an Interpretive Exhibit

- Caroline also noted Bill's comment concerning Stipulation I.B.3. in which Bill noted the USFS' concern that, as written, retention of a single historic property could result in NSF not funding any interpretive exhibit. Discussion ensued among the parties and there

was mention that there might be an interest in having interpretive signage as well as an interpretive exhibit displayed at, potentially, a museum. Caroline emphasized that NSF was open to either type of mitigation, but the dollar amount would need to be capped at \$100,000. Caroline agreed to revise the text in the first sentence of I.B.3. to reflect an option to also include interpretive signage.

- The ACHP suggested revising the language in the last sentence of Stipulation I.B.3. to: “If, however, the USFS requests retention of any contributing resources for itself or others, the Stipulation above shall not apply, and NSF will determine, following consultation with the SHPO and USFS what the appropriate contribution would be, if any.” All Parties (on the telecon) agreed to the language change. The ACHP also suggested dividing Stipulation I.B.3. into two sub-parts for ease in comprehension and in the event any future amendment was needed. Everyone agreed with this suggested change and NSF agreed to rework Stipulation I.B.3. so that the first two sentences would become subpart a. and the final sentence, as revised, would become subpart b.
- Mr. Reardon suggested that, perhaps, the USFS’ retention of any contributing resource should not trigger this mitigation measure, but, instead, retention of only the telescopes or other important features should trigger the implementation of the mitigation measure. NSF responded saying that applying different treatment to different resources could put NSF in the difficult situation of trying to parse out what is important versus not from the list of historic properties, and that it might be best to have a more focused discussion once USFS knows what, if anything, it would like to retain. No further comments on this were made.

#### Stipulation I.B.1. Required Documentation Prior to Change in Disposition of any Eligible Property

- SHPO staff asked that NSF consider preparing documentation via a National Register (NR) eligibility/nomination form (NR form), rather than preparing Historic American Buildings Survey (HABS)/Historic American Engineering Record (HAER) documentation. SHPO staff explained that it doesn’t have a lot of use for HABS/HAER documentation since it is not in a form they can use in publications or presentations, and it is not easily transmittable to the public. SHPO staff noted that HABS/HAER documentation is often the first mitigation measure that parties consider in the case of demolition, but the NR form approach would be more practical and useful.
- USFS and Caroline noted that USFS staff (Mark Gutzman) has already started work on a nomination and Caroline suggested that NSF use the information already prepared by USFS and then finalize the NR form.
- SHPO noted that this Stipulation only applies if demolition occurs, but NSF clarified that the Stipulation is triggered by either demolition or transition to USFS for other purposes. NSF further clarified that all of the proposed Alternatives identified in the National Environmental Policy Act (NEPA) process include some demolition activities, and, therefore, NSF could consider preparing a NR form for any historic properties that would be removed. SHPO expressed concern over this approach

because the NR form would address the Historic District as a whole, regardless of which component(s) might be demolished or retained.

- SHPO clarified that, although a NR form would be prepared, a NR nomination would not actually be submitted; rather, the NR form would only be used as a form of documentation.
- SHPO noted that this documentation would be appropriate for mitigation for mothballing or transfer to a non-federal entity as well and asked if there is any chance that there would be a transition to another entity where NSF wouldn't be involved. NSF stated that, at this juncture, it has not learned of any entity that is interested in taking the Observatory completely over but noted that Otero County has expressed some interest in retaining some of the facilities, including some of the housing units and water infrastructure.
- NSF also noted that USFS could take on any of the facilities that NSF has identified as not being needed for science operations;
- Jacobs provided input that completion of the NR form would be more comprehensive than the HABS/HAER documentation since it would describe the whole Historic District and would be more useful.
- Everyone agreed with the approach to use the NR form as the means to document historic properties as opposed to preparing HABS/HAER documentation, and NSF agreed to revise the Draft PA in accordance with this suggestion. NSF clarified, however, that it would only document historic properties within the Area of Potential Effects (APE), even if the USFS's ongoing NR nomination effort includes resources beyond the APE. The USFS agreed with this approach, as did the rest of the participants.
- There was a group discussion to clarify which actions would trigger preparation of a NR form; as written it would be prepared in the event of demolition or transfer of historic properties, with mothballing covered by Stipulation I. B.2. (although this was later changed to include mothballing as discussed below).
- The group discussed the terminology used in this Stipulation, and NSF agreed to change "any eligible property" to "any historic property," which is consistent with Section 106's regulatory language.
- SHPO asked that NSF include an opportunity for additional consultation in this Stipulation, by preparing a plan/outline for what would be in the NR form and allowing for SHPO review/comment. The USFS requested that it also be allowed to review and comment on the draft plan/outline. NSF agreed to include this procedural step and suggested that the following process be used: NSF would submit a plan/outline within 90 days of issuance of its Record of Decision on which alternative to implement and allow both the SHPO and USFS a 30-day review and comment period. After receiving comments from the SHPO and USFS, NSF would finalize the plan/outline and request relevant (NR nomination) material from the USFS.
- Jacobs suggested that submitting the plan/outline within 90 days following NSF's issuance of its Record of Decision should suffice, although it would expect to be

consulting with Steven Moffson of the SHPO on the details of the documentation ahead of the submission.

- SHPO requested that NSF specify that the NR form follow the format of the appropriate National Register Bulletins, and NSF agreed to do so.
- All Parties agreed to the proposed revisions of Stipulation I.B.1. identified above.

#### Stipulation I.B.2. Mothballing in Accordance with Historic Preservation Standards

- SHPO commented that there should be a consultation process piece in this measure, which could be written in or NSF could consider a separate stipulation that addresses SHPO consultation across all the measures.
- NSF inquired if the documentation component in Stipulation I.B.2(a) would be redundant to the documentation proposed under I.B.1. (the NR form), or if the SHPO would want the photos referred to in Stipulation I.B.2(a). NSF assumed that the cyclical maintenance plan (referred to in I.B.2(c)) should be retained. SHPO responded that the NR form would cover all the information they would need, so the documentation specified in Stipulation I.B.2(a) is not needed. SHPO requested that NSF keep the current language regarding a cyclical maintenance plan and cite to Preservation Brief 31. NSF agreed.
- Mark Klaene of APO suggested that Stipulation I.B.2.(b) be applicable to all scenarios (i.e., demolition, mothballing, transfer, etc.), and not just to the mothballing scenario. In response, the ACHP suggested that I.B.2(b), regarding disposition of historically significant equipment and artifacts, be pulled out as a stand-alone measure so that it is clear it is not tied only to mothballing. NSF agreed.

#### Stipulation I.A.1. Avoidance of Adverse Effects

- APO's Mark Klaene, via a comment submitted previously by email and again during this meeting, questioned whether NSF has sufficiently encouraged collaborators' use of historic properties and done enough to seek out possible partners on the education/tourism side (i.e., state tourism and STEM groups). NSF responded by describing the lengthy, multi-year process for notifying the science community about the need to change operations in light of a reduced funding environment, and NSF's request for expressions of interest in operating the Sacramento Peak Observatory. NSF further explained that, in its outreach to the science communities, an educational option was listed as a potential use of the Observatory. NSF also noted that its NEPA compliance has been a very public process with an extensive stakeholder list, including Otero County and New Mexico State University (NMSU). To date, the only entities that have responded to NSF's outreach are NMSU (which has an NSF grant to carry out research at the Observatory) and Otero County (which has expressed an interest in occupying some of the Observatory's facilities as a result of Mr. Klaene's involvement). NSF noted that the SHPO expressed some interest during the Section 106 meeting held in February of 2018 in working with other state entities, however, the SHPO reported

that, although there was interest, no funding was available. NSF also emphasized that it has made no decisions regarding the ultimate disposition of facilities at this point.

#### Whereas Clauses

- No comments.

#### II. General Provisions

- The ACHP brought up a recent experience in which multiple unanticipated discoveries were made. Based on that experience, the ACHP explained that NSF might need to work with the SHPO to discuss new mitigation measures if it encountered the same experience. NSF acknowledged this need but noted that this possibility could be managed within Stipulation II.C. (which provides a broad process for addressing unanticipated effects), Stipulation II.D. (which addresses unanticipated discoveries), and Stipulation II.J. (which allows for an amendment of the PA). The ACHP agreed; accordingly, no changes were made, however, the ACHP suggested that the reference to “48 hours” in Stipulation II.D.1. be replaced with “two business days” to account for issues resulting from potential staff absences over weekends. All participants agreed to this revision, and NSF stated it would make the change to the Draft PA.

#### Other Comments

- APO’s Mark Klaene, via a comment submitted previously by email and again during this meeting, noted that the U.S. Air Force (USAF) should be involved in this Section 106 consultation given its historic role. NSF noted that a former USAF employee, Richard Radick (the last USAF employee to work at Sacramento Peak Observatory (at the Evans Telescope)), did attend the public meeting on the Draft Environmental Impact Statement and submitted comments during the NEPA public comment period. NSF also noted that the USAF is on the distribution list for the NEPA process and has not expressed an interest in participating in NSF’s Section 106 process.
- Mr. Morin asked if this property has ever been considered for a National Park or an historic park within the state system. NSF responded by indicating that the land is currently within a National Forest. NSF also explained that there were discussions with the SHPO about whether the state had an interest in creating an historic park, and the SHPO staff responded that, while there is an interest, there are no available funds.
- Mr. Morin commented that there could be an opportunity for National Guard space weather stations, or training for garnering interest in space weather. NSF responded by stating that it had not received any expressions of interest concerning the use of the Observatory for such purposes.

## Next steps

- NSF agreed to provide meeting notes of this meeting and send a revised draft of the PA following the close of the comment period, which ends on July 1, 2018. A follow-up telephonic meeting was tentatively set for July 30<sup>th</sup>.