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ADVISORY COUNCIL ON HISTORIC PRESERVATION

Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949–1962)

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of approval of Program Comment on Army Capehart and Wherry Era Housing.

SUMMARY: On May 31, 2002, the Advisory Council on Historic Preservation approved a Program Comment that facilitates the Army's compliance with the National Historic Preservation Act with regard to its management of its inventory of Capehart and Wherry Era family housing and associated structures and landscape features.

DATES: The Program Comment goes into effect on June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Address all comments concerning this Program Comment to David Berwick, Army Affairs Coordinator, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606-8672. dberwick@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, requires Federal agencies to consider the effects of this undertakings on historic properties and provide the Advisory Council on Historic Preservation ("Council") a reasonable opportunity to comment with regard to such undertakings. The Council has issued the regulations that set forth the process through which Federal agencies comply with these duties. 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 process.

I. Background

According to the requirements for obtaining a Program Comment, the Army formally requested the Council comment on Capehart and Wherry Era Army family housing and associated structures and landscape features in lieu of requiring separate reviews under sections 800.4 through 800.6 of the section 106 regulations for each individual undertaking. The Army identified the category of undertakings as maintenance and repair; rehabilitation; layaway and mothballing; renovation; demolition; demolition and replacement; and transfer, sale or lease out of Federal control, affecting Army family housing built between 1949 and 1962 and termed "Capehart and Wherry." The Army also specified the likely effects that these management actions would have on historic properties and the steps the Army would take to ensure that the effects are taken into account. The Army included in their request to the Council the public comments that it received from a 30-day public comment opportunity provided through an earlier notice (67 FR 2644, January 18, 2002).

The Council subsequently published a notice of intent to issue the Program Comment (67 FR 12966, March 20, 2002) and notified State Historic Preservation Officers ("SHPOs"), the National Conference of State Historic Preservation Officers ("NCSHPO"), Tribal Historic Preservation Officers ("THPOs"), and the National Association of Tribal Historic Preservation Officers, and requested their views on the Army's proposed Program Comment.

During its May 31, 2002 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 19 in favor of approving and issuing the Program Comment and no votes against, with the Department of Defense abstaining.

Neither the Council nor the Army have engaged in the particularized consultation with Indian Tribes and

Native Hawaiian organizations, pursuant to 36 CFR 800.14(e)(4), since such consultation does not seem to be warranted. All Army actions considered under this Program Comment will be undertaken on Army property. The Program Comment will not have consequences for historic properties of religious and cultural significance, regardless of location, to any Indian tribe or Native Hawaiian organization since any Capehart and Wherry actions which would affect these types of properties are specifically excluded under the Program Comment.

II. Response to Public Comments

At the end of the 30-day comment period, only four comments had been filed: NCSHPO, the New Jersey SHPO, the National Trust for Historic Preservation ("Trust"), and the Department of Housing and Urban Development. The following Council responses reflect significant comments and the manner in which the Council has modified the Program Comment to respond to these public comments. The public comments are printed in bold typeface, while the Council response follows immediately in normal typeface:

The Army's proposal will, in effect, exempt one property type from any and all future compliance with section 106. The Program Comment process is not an exemption. The Program Comment reflects what the Army must follow to be in compliance with section 106.

The period of significance for Capehart and Wherry Housing is less than fifty years old. For most properties the passage of time is considered to be essential in order to gain scholarly perspective. While the National Register criteria allow for properties of exceptional significance to be eligible for the Register prior to this 50-year benchmark, the Council believes that Capehart Wherry properties would never meet the significance test for this category of exceptional significance. Since these properties are now on the cusp of meeting the 50-year benchmark, we believe it is appropriate for the Army to take management action, which would reduce their administrative cost of managing these resources, to comply with Section 106 in advance of meeting the 50-year threshold. The Council supports proactive agency planning in order to reduce administrative costs and burdens.

Conclusions reached about the non-significance of properties that are less than fifty years old are inherently suspect. The Council's notice of intent states that "The Army considers its inventory of Capehart and Wherry 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."

The Army's plans should receive detailed consideration, possibly by the Council as a whole. The Council's Federal Agency Program Committee reviewed the Program Comment and provided recommendations to the Council membership for its deliberation and vote at the May 31, 2002, business meeting. As stated above, at that meeting, the Council membership discussed the Program Comment and unanimously voted to approve and issue it.

SHPOs from states with significant inventories of Capehart Wherry era housing should be invited to participate in the development of treatment plans. The Council and the Army provided all SHPOs and NCSHPO ample opportunity to comment on the proposed treatment plans detailed in the Program Comment. That resulted in the receipt of comments from only one SHPO (New Jersey) and NCSHPO. Both comments were closely considered in the final drafting of the Program Comment. The consultation met the requirements of the section 106 regulations for the issuance of a Program Comment.

While documentation of the affected resources may be one effective treatment, preservation of significant examples needs to be considered also. The Program Comment has been modified to allow for identification and preservation of properties of particular importance for continued use as military housing within the funding and mission constraints of the Army.

The Advisory Council needs more information on the resource type affected, such as information about representative individual examples or types and information about groups of resources as they exist today on military installations. The revised and expanded context study will provide more detailed information on individual examples of the types of Capehart and Wherry housing which exist at each installation. This information will be used by the Army to prepare the design guidelines that will be used by installations in future planning efforts that affect Capehart and Wherry communities.

The Council should insure that Capehart Wherry communities are

evaluated within a comprehensive context, including evaluating significance within the context of local and state significance, Criteria for Evaluation B (related to individuals of historic importance) and C (work of a master). Because the housing program was not uniform across all installations, a post-by-post evaluation needs to be made for groups of resources in order to evaluate their significance. The revised and expanded context study will specifically address the importance of historically important builders, developers and architects that may have been associated with design and construction of Capehart and Wherry Era housing developments at specific Army installations.

The potential for secondary effects on National Register listed or eligible property that may be adjacent to Capehart Wherry era housing is not consider in this proposal, and archaeology is not considered either. Ground disturbing activities on Army installations should be evaluated on an individual basis. The Program Comment specifically states that it does not apply to the following properties historic properties: (a) Archaeological sites; (b) properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations; and/or (c) historic properties other than Army Capehart and Wherry Era housing, associated structures and landscape features. This is found in section III, Applicability.

The Council's regulations emphasize public participation. We do not believe the spirit of the Council's regulations have been addressed by one Federal Register notice. We disagree. The Council's regulations allow agencies to use their own public review processes, including NEPA, in complying with the public involvement requirements under the Council's regulations. The general public had an opportunity to respond to comments under the Army's NEPA document and again through the Council's notice of intent process. There were no general public comments received by either the Army or the Council during these public review processes. We believe that the non-response by the general public reflects its lack of interest in these types of properties, especially as they relate to military installations.

Would the program comment affect the Army's responsibilities under section 110 of the National Historic Preservation Act? Section 110(a)(2)(E) requires agency's procedures for compliance with Section 106 to be consistent with the Council's

regulations and provide a process for identification, evaluation, and consultation regarding the means by which adverse effects are considered. This Program Comment was issued and approved by the Council pursuant to the Council's section 106 regulations.

The Army's proposal includes no commitment that any of these useful documents (i.e., context study, design guidelines) will actually be used or applied by the Army. The intent of the Program Comment is that the Army apply these guidelines consistently across installations where Capehart and Wherry units will be retained by the Army. If the Council believes that the Army is not using the guidelines as intended, the Council may withdraw the Program Comment in its entirety.

There (is no) proposal by the Army to commit to the preservation of Capehart Wherry properties. The Program Comment has been modified to allow for identification and preservation of properties of particular importance for continued use as military housing within the funding and mission constraints of the Army.

The Army should not be allowed to proceed under the program comments demolition prior to the completion of the mitigation actions. While the Army is allowed to proceed with action which affect Capehart and Wherry properties prior to completion of mitigation, the Program Comment prevents them from completing management action which may preclude the eventual successful completion of the steps outlined in the Program Comment.

Rather than leaving to chance the question of which of these properties may survive, if any, the Army should identify a limited selection of these resources in advance, based on criteria of significance, and should place an explicit priority on actually preserving them. The Program Comment has been modified to establish a process for the identification of Capehart and Wherry Era properties of particular importance and to allow the preservation of such properties for continued use as military housing within the funding and mission constraints of the Army.

The Army's proposal does not contemplate any distinction whatsoever in the treatment of properties that have special architectural or other significance. The revised and expanded context study will include identification of significant architects, builders/contractors/developers and subcontractors. Upon completion, the context study will be reviewed for Capehart and Wherry Era properties of particular importance. Properties identified in this review process may

have additional historical documentation completed for them, as needed, they will be taken into consideration in producing the video documentation and they will be considered for preservation through continued use as Army family housing.

III. Text of the Program Comment

The full text of the Program Comment is produced below:

Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949–1962)

I. Introduction

This Program Comment, adopted pursuant to 36 CFR 800.14(e), demonstrates Department of the Army (Army) compliance with its responsibilities under section 106 of the National Historic Preservation Act with regard to the following management actions for Capehart and Wherry Era Army family housing, associated structures and landscape features: maintenance and repair; rehabilitation; layaway and mothballing; renovation; demolition; demolition and replacement; and transfer, sale of lease out of Federal control.

Structures associated with this family housing include detached garages, carports and storage buildings, and the landscape features (including but not limited to the overall design and layout of the Capeharts and Wherry Era communities, including road patterns, plantings and landscaping, open spaces, playgrounds, parking areas, signage, site furnishings, views into and out of the community, lighting, sidewalks, setbacks and all other associated cultural landscape features). A small percentage of buildings and structures constructed during this period were not constructed with funds provided through the Capehart and Wherry funding programs, but are similar in all other respects, and are therefore included in this Program Comment.

II. Treatment of Capehart and Wherry Properties

a. Consideration of Eligibility

The Army conducted a historic context of its Capehart and Wherry properties 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 Capehart and Wherry Era housing management as it relates 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 (Council), and nationally recognized experts in the field of historic preservation from academia and industry. As recommended by the symposium participants, the treatment section, below, presents the programmatic approach for complying with section 106. The Army considers its inventory of Capehart and Wherry Era 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 Army requested a Program Comment as an Army-wide section 106 compliance action related to management of Capehart and Wherry Era housing, associated structures and landscape features. This programmatic approach will facilitate management actions for maintenance and repair; rehabilitation; layaway and mothballing; renovation; demolition; demolition and replacement; and transfer, sale or lease of Capehart and Wherry Era housing, associated structures and landscape features out of Federal control. Such actions present a potential for adverse effects to these historic properties.

The following treatment is based on the measures proposed by the Army in their request for Program Comment, the comments received from the Council's "notice of intent to issue program comments" as published in the **Federal Register** (67 FR 12956; March 20, 2002) and follow up discussions between the Council, the Army, NCSHPO, and the Trust.

(1) *Context Study*: The Army will expand and revise the existing historic context, *For Want of a Home: A Historic Context for Wherry and Capehart Military Family Housing*. Consistent with issues identified during the symposium on Capehart and Wherry Era Housing held by the Army in May 2001, and subsequent public review, the Army will expand the historic context to address the following important issues:

(1) Explore changing Army family demographics following the end of the World War II and their impact on housing needs and responsive programs;

(ii) Focus on post-World War II suburbanization, housing trends and affordable housing programs in the civilian sector;

(iii) Identify those Capehart and Wherry properties that may be of particular importance due to their association with historically important builders, developers and architects;

(iv) Discuss associated structures, and landscape features, in addition to addressing the housing units; and

(v) Describe the inventory of Capehart and Wherry Era housing, providing information on the various types of buildings and architectural styles and the quantity of each.

(2) *Context Study Review*: The Army review the results of the expanded and revised context study and determine whether any of those properties identified under section II(b)(1)(iii) are of particular importance. The Army will notify the Council of the results of this review, and the Council will forward the results to the NCSHPO, and the Trust.

(3) *Design Guidelines*: The Army's scoping process identified landscape features as an important attribute of Capehart and Wherry Era land-use planning and development. Using information developed in the expanded and revised context study, the Army will develop *Capehart and Wherry Era Neighborhood Design Guidelines* that consider the importance of Capehart and Wherry Era family housing, associated structures and landscape features. The Army will:

(i) Provide the design guidelines to the Council for review;

(ii) Distribute the design guidelines to those facilities and installations that have been identified in the expanded and revised context study as having Capehart and Wherry Era properties; and

(iii) Consider the design guidelines in planning actions that affect the Army's Capehart and Wherry Era housing, associated structures and landscape features.

(4) *Properties of Particular Importance*: For Capehart and Wherry properties that have been determined to have particular importance under section II(b)(2), above, the Army will:

(i) Consider the need to conduct additional historical documentation for these properties;

(ii) Focus video documentation efforts on such properties; and

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

(5) *Tax Credits*: The Army will advise developers involved in the Army's privatization initiatives that Capehart and Wherry Era properties may be eligible for historic preservation tax credits.

(6) *Video Documentation*: The Army will document and record Capehart and Wherry Era housing, associated structures and landscape features

through preparation of a video. The video will:

(i) Document and record representative structural types and landscape features at three installations, including appropriate examples of properties of particular importance;

(ii) Explain the relationship of this housing construction program to significant issues and topics researched for the expanded and revised context study;

(iii) Be distributed for educational purposes, and archived by the Army; and

(iv) Be provided, in digital format, to the Council, the Trust, and the NCSHPO.

(7) *Schedule for Completion:*

(i) Within 12 months from Council approval of the Program Comment, the Army shall complete:

(A) The expanded and revised context study for Capehart and Wherry Era housing as described in section II(b)(1), above;

(B) Review of the context study for properties of particular importance as described in II(b)(2), above; and

(c) The design guidelines as described in section II(b)(3), above; exclusive of section II(b)(3)(iii).

(ii) Within 24 months from Council approval of the Program Comment, the Army shall complete:

(A) Its consideration of properties of particular importance as described in section II(b)(4), above; and

(B) The video documentation of Capehart and Wherry Era housing as described in Section II(b)(6), above.

(8) *Availability:* Upon their completion, the Army will make final products available to installation commanders.

III. 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:

(a) Archeological sites;

(b) Properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations; and/or

(c) Historic properties other than Army Capehart and Wherry Era housing, associated structures and landscape features.

IV. Effect of Program Comment

By the following this Program Comment, the Army meets its responsibilities for compliance under section 106 regarding management of its entire inventory of Capehart and Wherry Era housing (1949–1962), associated structures and landscape features.

Accordingly, installations are no longer required to follow the case-by-case section 106 review process for each individual management action affecting Capehart and Wherry Era housing, associated structures and landscape features.

The Army may carry out management actions prior to the completion of the treatment steps outlined above, so long as such management actions do not preclude the eventual successful completion of these steps.

This Program Comment will remain in effect until such time as the Department of the Army determines that such comments are no longer needed, and notifies the Council, in writing, or the Council withdraws the Program Comment in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, the Army would be required to comply with the requirements of 36 CFR 800.3 through 800.7 for each individual management action.

The Council approved this Program Comment on May 31, 2002.

[Signed by Chairman John L. Nau, III on May 31, 2002]

Authority: 36 CFR 800.14(e).

Dated: June 4, 2002.

John M. Fowler,

Executive Director.

[FR Doc. 02–14389 Filed 6–6–02; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Shrieve Chemical Co. of Woodlands, Texas, an exclusive license to U.S. Patent No. 5,676,994, “Non-Separable Starch-Oil Compositions,” issued on October 4, 1997 and to U.S. Patent No. 5,882,713, “Non-Separable Compositions of Starch and Water-Immiscible Organic Materials,” issued on March 16, 1999, for all uses in the field of oil drilling applications including, but not limited to, drilling muds and drilling lubricants.

U.S. Patent No. 5,676,994 is a continuation of U.S. Patent Application Serial No. 08/233,173, “Non-Separable Starch-Oil Compositions,” and U.S.

Patent No. 5,882,713 is a continuation-in-part of U.S. Patent Application Serial No. 08/233,173. Notice of Availability for U.S. Patent Application Serial No. 08/233,173 was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received within thirty (30) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government’s patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Shrieve Chemical Co. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–14288 Filed 6–6–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet on June 17, 2002, in Yreka, California. The purpose of the meeting is to discuss the following topics: Approval of Previous Meeting Minutes; Rating Criteria Review and Design; Timeline for RFPs from subgroup; Funding mechanisms status (report from Forest Service); Review successful and unsuccessful letters; 15% Merchantable