

MEMORANDUM OF AGREEMENT
AMONG THE U.S. ARMY CORPS OF ENGINEERS,
THE WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
THE WEST VIRGINIA BOARD OF EDUCATION,
AND THE MCDOWELL COUNTY BOARD OF EDUCATION

REGARDING

Construction of the War PreK-8 Elementary/Middle School
at
War, McDowell County, West Virginia

WHEREAS, the U.S. Army Corps of Engineers, Huntington District, (USACE) is providing funding to the West Virginia Board of Education (State Board) for construction of the War PreK-8 Elementary/Middle School as part of a lump sum contract for relocation, rearrangement or alteration of facilities under the McDowell County Nonstructural (Floodproofing) Project; and

WHEREAS, the War PreK-8 Elementary/Middle School (Project) will be built on a football field immediately in front of the existing Big Creek High School, which will be closed and transferred from the McDowell County Board of Education (County Board) to the City of War; and

WHEREAS, the USACE in consultation with the West Virginia State Historic Preservation Office (SHPO) has determined that the Big Creek High School campus is eligible for listing in the National Register of Historic Places; and

WHEREAS, an archeological site (46MD62) has been identified in the football field of the Big Creek High School; and

WHEREAS, the USACE in consultation with the SHPO has determined that archeological site 46 MD61 is not eligible for listing in the National Register of Historic Places; and

WHEREAS, the USACE in consultation with the SHPO, has determined that the project may have adverse effects on the Big Creek High School; and

WHEREAS, the USACE has consulted with the SHPO, the Council for West Virginia Archaeology, Cherokee and Shawnee Indian tribes, and the Advisory Council on Historic Preservation (Council) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations 36 C.F.R. Part 800 to resolve the adverse effects of the Project on historic properties, and

WHEREAS, the USACE, in consultation with the SHPO has determined that the adverse effects of the Project will be reduced by certain activities of public benefit;

NOW, THEREFORE, the USACE, the State Board, the County Board, and the SHPO agree that the Project shall be implemented in accordance with the following stipulations to satisfy the USACE's responsibilities under Section 106 of the National Historic Preservation Act.

Stipulations

To ensure USACE participation in this UNDERTAKING, the State Board and County Board shall accomplish the following measures through qualified agents and demonstrate their successful execution prior to the lapse of this agreement:

1. Preparation of a brief history of the community of War and the role of Big Creek High School in the community.
2. Preparation of a National Register of Historic Places nomination form for Big Creek High School, including archeological site 46MD62 as a noncontributing property.
3. Development of lesson plans and teacher training to include archeology in the McDowell County elementary, middle and high school curricula; the County Board shall implement the plan.

Schedule and Duration

The stipulated measures will be completed within two years of the date of this agreement.

This MOA shall be null and void if its terms are not carried out within two (2) years from the date of its execution. Prior to such time, the signatories may consult to extend the terms of the MOA and/or amend the MOA.

Reporting and Review

The USACE, the State Board and the County Board shall ensure that draft copies of all products prepared pursuant to this agreement are submitted to the SHPO for 30 days review and comment and shall take into account the SHPO's comments in finalizing all products.

The USACE shall submit two copies of all final products to the SHPO and the State Board shall distribute 25 copies of the history report of War and 100 copies of the video to area schools and libraries.

Dispute Resolution

Should any party to this MOA object to any actions proposed or the manner in which the terms of this MOA are implemented, the USACE shall consult with the objecting party(ies) to resolve the objection. If the USACE determines, within 30 days, that such objection(s) cannot be resolved, the USACE shall:

- A. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise the USACE on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the

MOA, shall be taken into account by the USACE in reaching a final decision regarding the dispute.

- B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the USACE may render a decision regarding the dispute. In reaching its decision, the USACE shall take into account all comments regarding the dispute from the parties to the MOA.
- C. The USACE shall notify all parties of its decision in writing before implementing that portion of the UNDERTAKING subject to dispute under this stipulation. The USACE's decision shall be final.
- D. The USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute shall remain unchanged.

Amendments and Noncompliance

If any signatory to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment shall be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the MOA in accordance with the following section, Termination.

Termination

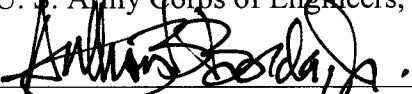
If the MOA is not amended following the consultation and stipulations, it may be terminated by any signatory. Within 30 days following termination, the USACE shall notify the signatories they intend to initiate consultation to execute a new MOA with the signatories under 36 CFR 800.6(c)(1) (*Resolution of Adverse Effects*); or request the comments of the Council under 36 CFR 800.7(a) (*Failure to Resolve Adverse Effects*).

Findings and Conclusions

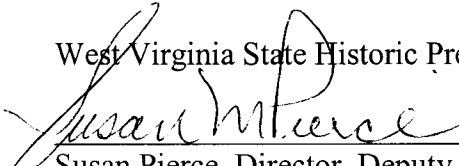
Execution of this MOA by the USACE, WWSHPO, the State Board, and the County Board; the submission of documentation and filing of this MOA with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv) (*Resolution of Adverse Effects*) prior to the USACE's approval of this UNDERTAKING; and implementation of its terms is evidence that USACE has taken into account the effects of this UNDERTAKING on historic properties and afforded the Council an opportunity to comment.

SIGNATORIES

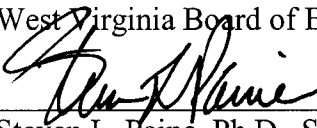
U. S. Army Corps of Engineers, Huntington District

 Date 20 Oct 2005
for Stephen M. Worley, P.E., Chief, Planning Branch

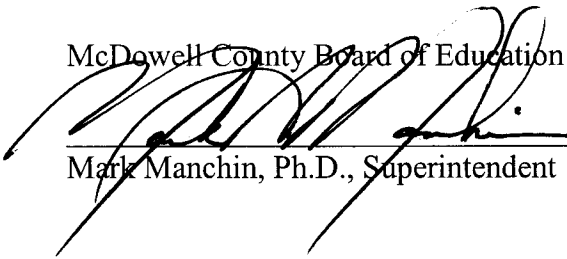
West Virginia State Historic Preservation Office

 Date 10/24/05
Susan Pierce, Director, Deputy State Historic Preservation Officer

West Virginia Board of Education

 Date 10/24/05
Steven L. Paine, Ph.D., Superintendent

McDowell County Board of Education

 Date 10/24/05
Mark Manchin, Ph.D., Superintendent