

V

CHAPTER V – Consultation, Coordination and Compliance



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The future of the Flight 93 National Memorial is being shaped with extensive input from the public, nonprofit organizations, local community groups, businesses and industries, and Federal and State resource and regulatory agencies. During the preparation of the Flight 93 National Memorial General Management Plan/Environmental Impact Statement (EIS), consultation and coordination regularly occurred with Federal, State and local agencies, township supervisors, borough managers, county officials, resource specialists and community members. The planning process was open and public involvement occurred at the local, national, and international levels.

The National Park Service joined with its Partners—the Families of Flight 93, the Flight 93 Advisory Commission, and the Flight 93 Memorial Task Force—to solicit ideas for creating a fitting memorial to the passengers and crew of Flight 93 who gave their lives on September 11, 2001.

SCOPING

Scoping – an early process for soliciting input and identifying issues of concern – was initiated on December 10, 2003, when the National Park Service published a formal “Notice of Intent to Prepare a General Management Plan and EIS for the Flight 93 National Memorial” in the *Federal Register*. This notice announced the agency’s intent to prepare a management plan for the new national park unit and an EIS pursuant to the National Environmental Policy Act of 1969. The National Park Service conducted its first agency scoping meeting on December 15, 2003, at its office in Somerset, Pennsylvania. A total of 28 representatives from a broad range of Federal, State and local agencies attended, as well as representatives from the Partners. A second agency scoping meeting was conducted one year later on December 9, 2004 at the same location, and 33 representatives participated, including the National Park Service staff and project consultants.

Table I-2 (Chapter I-Purpose and Need) lists the scoping meetings, Advisory Commission and Task Force meetings that were open to the public and public workshops and meetings that were conducted through the design exhibition and public comment period in September 2005. The issues and comments that were identified and received during scoping are also summarized in Chapter I.

Copies of all public and internal meeting minutes are on file with the National Park Service Flight 93 National Memorial office in Somerset, Pennsylvania.

COMPLIANCE STATUS

Appendix A provides a listing of the Federal and State laws and regulations, Executive Orders and departmental policies germane to this project. Compliance with the most significant of these Federal and pertinent State requirements is summarized in the following sections.

National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347)

The National Environmental Policy Act (42 U.S.C. 4321-4347) (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals and provides the means for implementing its policies. NEPA requires Federal agencies to consider a reasonable range of alternatives to the proposed Federal action and document impacts resulting from these proposed actions that could potentially affect the quality of the human and human environments. NEPA further requires public input to the decisionmaking process and disclosure of the information related to the potential environmental consequences of the proposed action and the alternatives. The draft General Management Plan/EIS will be available for public review and comment for a period of 45 days. Comments received during this period will be considered and addressed where appropriate in the final document. A Record of Decision will be published 30 days following the publication of the final General Management Plan/EIS and will document the final decision for developing the Flight 93 National Memorial.

Council on Environmental Quality Regulations (40 CFR 1500-1508)

The CEQ regulations implement the provisions of section 102(2) of NEPA and provide specific guidance to Federal agencies in preparing an EIS. Pursuant to §1506.5(c) of these regulations, the consultants who contributed to the development of the EIS submitted written disclosures statements to the National Park Service, stating that they have no financial or other interests in the decision or the outcome of the project. All disclosures statements are on file with the National Park Service Flight 93 National Memorial office in Somerset, PA.

Flight 93 National Memorial Act (P.L. 107-226; 116 Stat. 1345)

This Act authorizes the National Park Service to establish a national memorial to commemorate the passengers and crew of Flight 93 who, on September 11, 2001, courageously gave their lives thereby thwarting a planned attack on our Nation's Capital. The Act mandates that the Flight 93 Advisory Commission is required to—

1. submit by September 24, 2005, a report to the Secretary of the Interior and Congress containing recommendations on the planning, design, construction and long-term management of a permanent memorial at the crash site.
2. advise the Secretary on the boundaries of the memorial site.
3. advise the Secretary in the development of a management plan for the memorial site.
4. consult and coordinate closely with the Flight 93 Task Force, the Commonwealth of Pennsylvania, and other interested parties, as appropriate, to support and not supplant the efforts of the Flight 93 Task Force on and before the date of the enactment of this Act to commemorate Flight 93.
5. provide significant opportunities for public participation in the planning and design of the memorial.

The National Park Service and its Partners recommended a boundary for the Flight 93 National Memorial to the Secretary of the Interior through enactment of Resolution 0401, dated July 30, 2004. The Secretary approved this recommendation on January 14, 2005. An international design competition for the memorial attracted 1,011 design submittals from across the country and from around the world. All entries in the competition were exhibited in Somerset, Pennsylvania and were photographed and posted on the project website. Visitors to the exhibition and the website could provide their comments on the designs from January 15 to February 26, 2005. An independent jury, comprised of nine design professionals, family members, and national leaders evaluated all the Stage I entries, reviewed the public comments and recommended five design concepts that best embodied the spirit of the Mission Statement. In Stage II, these five finalists refined their Stage I designs to fully explain their concept. The final designs were exhibited in Somerset, Pennsylvania and on the project website from July 1 through September 25, 2005. These five final designs represented the preliminary alternatives to be considered for this General Management Plan/EIS. The public was again given

the opportunity to comment on the final designs at the exhibition and through the project website. During the first week of August 2005, a separate jury reviewed all public comments received to date and evaluated the designs. The Stage II Jury was comprised of 15 members including family members, design and art professionals, and community and national leaders. The jury's selected design was supported by all the Partners, adopted by the Commission and publicly announced on September 7, 2005. The selected design represents the Preferred Design Alternative and the agency's preferred alternative.

National Park Service Organic Act of 1916 (16 U.S.C. 1-4, et seq)

The National Park Service Organic Act mandates that the National Park Service conserve park resources and values and provide for their enjoyment in ways that leave them unimpaired for future generations.

National Parks and Recreation Act of 1978 (16 U.S.C. 7(b))

This Act requires the National Park Service to conduct comprehensive general management planning for all its park units.

National Historic Preservation Act of 1966, as amended (16 U.S.C. 470)

Pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470) and its promulgating regulations (36 CFR 800), consultation with the State Historic Preservation Office (SHPO) concerning potential effects to historic properties and cultural resources is required. Consultation with the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation was initiated on November 28, 2003. In its response, dated December 30, 2003, the SHPO responded that there were no archeological resources or historic structures recorded within the Flight 93 area. However, the SHPO noted that there is a high probability for significant prehistoric archaeological resources to be located adjacent to the wetland area just south of the crash site and on the saddle just east of the reclaimed area. If earth disturbing construction activities are planned for these areas, an archaeological survey was recommended during the planning phase. The National Park Service has contracted archeologists from Indiana University of Pennsylvania to provide an overview of the park explaining the mining history and providing a brief overview of any potential resources at the crash site. This study is scheduled to begin in 2006.

In March 2005, the National Park Service re-initiated consultation with the Bureau for Historic Preservation and submitted updated information on an environmental review form. On March 23, 2005, the Bureau responded. The Bureau also recommended that an archeological survey be conducted in areas where mining had not previously occurred and where construction activities and ground disturbance are proposed (see **Appendix B**). Specifically, the Bureau stated that there is a “high probability for significant prehistoric archaeological resources to be located adjacent to the wetland area just south of the crash site and on the saddle just east of the reclaimed area.” No further concerns were expressed.

Section 110 of the National Historic Preservation Act requires that National Park Service identify and nominate all eligible resources under its jurisdiction to the National Register of Historic Places. Conversations with the Pennsylvania Bureau for Historic Preservation and the National Park Service National Register staff regarding the crash site nomination to the National Register were conducted. On March 23, 2005, the SHPO submitted a letter stating that there may be historic buildings and or structures eligible for the National Register of Historic Places within the project area. However, due to the nature of the proposed action, the SHPO’s opinion was that there will be no effect on these properties (**Appendix B-Agency Correspondence**).

On April 29, 2005, the National Park Service consulted again with the SHPO to advise the office of the discovery of a mid-19th century family cemetery within the Flight 93 National Memorial boundary and to acknowledge the listing of the Flight 93 crash site on the National Register of Historic Places on November 8, 2002. Recognition that three log cabins constructed during the 1930s are located south of the crash site within the boundary. These cabins are discussed in the National Park Service draft *Cultural Landscapes Inventory*, and are potentially eligible for inclusion in the National Register.

In August 2005, National Park Service coordinated with the Office of the National Register in Washington, DC, regarding the possibility of future removal of the mining structures on the site and to obtain guidance on the ability of the designs to modify the area within the crash site. The existing buildings and the mining draglines are not central to the preferred alternative and would not be affected by the selection or

implementation of either alternative. It is anticipated that the draglines would not be acquired and that the existing mining structures would be removed once acquired because of the high cost of acquiring, remediating and stabilizing these structures. The National Park Service will prepare national register documentation to determine the national significance of these structures and will comply with all relevant policies and guidelines before undertaking any actions that would impact these structures.

Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531 et seq.)

Section 7 of the Endangered Species Act requires all Federal agencies to consult with the U.S. Fish and Wildlife Service prior to implementing any Federal action to ensure that the action does not jeopardize the continued existence of protected species or their critical habitat.

On November 28, 2003, Section 7 consultation was initiated with the U.S. Fish and Wildlife Service’s (USFWS) Pennsylvania Field Office in State College, Pennsylvania. On December 22, 2003, this office responded by saying that “Except for occasional transient species, no federally listed or proposed threatened or endangered species under our jurisdiction are known to occur within the project impact area.” Therefore, no further consultation under this Act was required.

On March 4, 2005, the National Park Service reinitiated consultation with the USFWS, requesting any supplemental comments or new information. During this response, the USFWS commented that the project area is within the range of the federally listed, endangered Indiana bat (*Myotis sodalists*), and concern regarding bat hibernaculum on site was expressed.

Mr. John Weir, land manager for PBS Coals, Inc., explained that the mines within the Flight 93 National Memorial boundary were immediately closed upon cessation of mining activities and all portals and openings were sealed. These mines were not abandoned for any prolonged period of time. In addition, Mr. Weir and others who worked in the mine explained that bats were never seen in the mine most likely due to the noise and the lights that occurred during mining activities. Bats would not hibernate under these conditions. Further, bats are more likely to occur in abandoned limestone mines rather than in coal mines and no caves exist within the boundary.

The Western Pennsylvania Conservancy conducted a natural resource survey of the site and stated that they were not aware of any known occupied summer habitats for the Indiana bat within Somerset County or Pennsylvania's Allegheny Mountains. Information available from the field studies of this project, site maps and interviews did not reveal winter habitat, or particularly suitable summer habitat within the Flight 93 National Memorial boundary. This includes no knowledge of open portal deep mines in the area that might serve as a winter hibernacula. However, based on PA Natural Heritage Program data, provided by the PA Game Commission, there are two known hibernacula within Somerset County roughly 8 kilometers to 25 kilometers from the site.

On April 29, 2005, National Park Service requested input from the Pennsylvania Game Commission regarding the potential presence of Indiana bats on the Flight 93 National Memorial site. On May 25, the Commission responded with a review of the proposed project. The Commission's determination was that except of occasional transient individuals, the proposed project is not located within an area that include habitat of an endangered or threatened species of bird or mammal recognized by the Pennsylvania Game Commission. Furthermore, the Commission does not anticipate any long term adverse impacts to any critical or unique habitats as a direct result of this project.¹

On August 3, 2005, FWS provided comments indicating that based on a preliminary review of the project, they concluded that development of Flight 93 National Memorial would have no adverse effect on the Indiana bat or any other federally listed species. FWS further stated that if additional tree clearing is proposed or if any natural caves or abandoned mine portals are discovered, further consultation with this agency would be required. Based on a preliminary review of the project, FWS concurred that the proposed project would likely not affect the Indiana bat.²

Fish and Wildlife Coordination Act

The National Park Service must coordinate with the U.S. Fish and Wildlife Service concerning the potential impacts to water resources through implementation of Alternative 2. This alternative proposes to extend the design through artificially constructed wetlands in the Bowl. The Fish and

Wildlife Coordination Act of 1934 (16 U.S.C. 661-666c; 48 Stat. 401), as amended, requires Federal agencies to coordinate with USFWS whenever water resources may be affected. This Act authorizes Federal water resource agencies to acquire lands specifically for fish and wildlife in connection with water resource projects. If wetlands are impacted by this project under either alternative, coordination with the U.S. Fish and Wildlife Service would be reinitiated under this Act.

Executive Order 13112-Invasive Species

Executive Order 13112 prevents the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species can cause. The National Park Service is aware and concerned about the potential infestation of the hemlock woolly adelgid that is reportedly spreading through the state. Plans will be implemented to address this species and other invasives known to occur on site and within the area.

National Park Service Policies

The Flight 93 National Memorial General Management Plan/EIS has been prepared in accordance with the National Environmental Policy Act of 1969 and its implementing regulations. The format and the process prescribed in the National Park Service Management Policies, 2001 were followed in the preparation of this document. Other major National Park Service policies that were referenced during the preparation of this General Management Plan/EIS included—

- Director's Order 12-*Conservation Planning, Environmental Impact Analyses and Decision-making* and National Park Service Environmental Handbook;
- Director's Order 53-*Special Park Uses*
- Director's Order 25-*Land Protection*
- Director's Order 28-*Cultural Resource Management*
- NPS 77-1-*Wetland Protection*

A listing of other applicable NPS policies that were used in the preparation of this document can be found in Appendix A.

¹Pennsylvania Game Commission letter to Joanne Hanley, Flight 93 National Memorial, dated May 25, 2005.

²U.S. Fish and Wildlife Service, Aug. 3, 2005. Letter from David Densmore, Supervisor, U.S. Fish and Wildlife Service, to Joanne Hanley, National Park Service.