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Mitigating Effects to Battlefield Landscapes: A National Park Service U.S. Army Corps Of Engineers Partnership

This monograph addresses historic preservation planning for Civil War battlefields,[1] one of the most contentious and otherwise difficult tasks confronting project-review participants. The steady development of privately owned rural land will continue to affect these resources and simultaneously challenge federal officials bearing oversight responsibility. Efforts to mitigate the adverse effects that development poses to battlefield landscapes have been fraught with acrimony and can produce costly "solutions" lying near the extremes (i.e., total development or total preservation) of the option spectrum (Cease 1993). The following paragraphs describe a preservation–planning partnership in Virginia and its attempts to find lodgments closer to the center of this range.

In 1992, Hal Wiggins, environmental scientist for the newly created Fredericksburg Field Office of the U.S. Army Corps of Engineers (FFO), requested that Fredericksburg and Spotsylvania National Military Park assist him by serving as an "interested person" in project reviews involving Civil War-era historic resources. The FFO reviews permit applications for the development of public and private lands falling under the purview of Section 404 of the Clean Water Act of 1972 and related laws and regulations. The FFO's jurisdiction covers about 1,200,000 acres in north-central Virginia, an area whose technologically advanced transportation networks attracted battalions of Civil War soldiers during the mid-nineteenth century and battalions of developers during the late-twentieth. In the eastern portion of FFO's jurisdiction, the park owns 7,000 acres contested by those soldiers and orients more than a million visitors to the battlefields annually.

Wiggins, however, requested the partnership because of the park's holdings in archival materials, not real estate. Although the park owns fewer than one-quarter of the Civil War sites in the FFO's jurisdiction, leaving the remainder in private hands, the park's visitors have always expected park historians to provide interpretation of *all* such sites. Many of those visitors are local landowners curious about their property. Others are genealogists seeking information on the campsites, march routes, and combat areas of ancestors. In re-

sponse to this demand, the park created a huge database of maps, photographs, diaries, and other historical materials about local Civil War sites both publicly and privately owned. The latter category includes the scene of the first combat between an African-American unit of the Union Army of the Potomac and a unit of the Confederate Army of Northern Virginia, the site of the only photographs known to have been taken in 1864 of dead soldiers on the battlefield where they fell, and the rediscovered location of a long-"misplaced" cavalry engagement where the ill-fated General George Armstrong Custer led Federal troopers against the Confederate squadrons of a West Point classmate.

Whenever Wiggins considered issuing an Army Corps permit, Section 106 of the National Historic Preservation Act of 1966 directed him to "take into account any effect" that action might have upon historic resources. As outlined in the U.S. Code of Federal Regulations (CFR), he would "seek ways" to avoid or mitigate any adverse effects to those resources posed by development, which could include residential, commercial-industrial, and public utilities projects. As part of such planning, he would consult with the Virginia State Historic Preservation Officer (VASHPO) and other "interested persons." It is important to note that the CFR emphasizes the importance of formulating strategies for "reconciling the interests" of the parties involved, including the permit applicants, over preventing development entirely.

Although Wiggins lacked historical staff and archives of his own, he was beginning to encounter project reviews that involved Civil War-era historic resources. As an "interested person," the park would (1) provide him with information from its data base and (2) suggest non-archeological mitigation measures he might implement as permit conditions.

The park would also assist the VASHPO during project-reviews. The role of the latter included advising FFO on archeological resources. The VASHPO, similarly lacking a detailed database on Civil War sites and events in the FFO's jurisdiction, was especially eager to predict the likelihood of whether soldiers' remains or sub-surface evidence of their battle movements and other activities were present at any given site. For example, the park's archival searches and pedestrian surveys often uncovered evidence that extensive disinterment campaigns by the directors of four local soldiers' cemeteries, together with intensive metal-detecting campaigns by relic hunters, had rendered the survival of soldiers' remains and other categories of 1860s artifacts doubtful. The VASHPO would typically recommend that mitigation measures include archeological surveys for Civil War-era resources whenever the park found little or no preliminary evidence of these subsurface disturbances.

In 1992, the FFO reviewed a permit application for a residential

development, the first examination involving the park as an "interested person." The development encompassed an area whose principal historical resources were several segments of Civil War fortifications that had not been the scene of combat. Historical review was therefore restricted to the relatively minuscule acreage occupied by the earthen berms of the fortifications. The applicant, moreover, had always intended to incorporate these resources into his marketing concept. Mitigation planning was consequently a simple process, almost a formality, and produced conservation easements straddling nearly all of the berms.

The next project review, however, involved a property containing a more problematic type of Civil War-era historical resource: a combat area covering the entire project site but containing no fortifications. (Civil War combat did not always involve the construction of fortifications, and those that were extant often channeled battles into unfortified areas.) In the absence of applicable mitigation guidelines or precedents, the park staff could do little beyond providing extensive documentation of the historical event and urging preservation of the entire site. The initiative thus remained with the applicant, who, lacking the same guidelines, successfully argued that *in toto* preservation was both unfair and impractical. A shopping center and its surrounding parking lot now occupy the battlefield.

Clearly then, the FFO-park partnership required a balance between documentation and mitigation. The park had provided the former in abundance but suggested little of the latter. The result was a painful reminder that federal preservation law emphasized compromise over prohibition. The lack of workable mitigation measures encouraged the adoption of inflexible negotiating stances, produced no preservation of the battlefield landscape, and endangered the future participation of the park, which served entirely at the invitation of the FFO.

In 1993, the park's historical staff responded to the challenge by devising two mitigation concepts for battlefield landscapes. These measures were non-development corridors and historical mitigation-banking. (See the schematic representations in Figures 1-4.)

Under the first concept, project-review participants agree to exclude development from a corridor that preserves all the landscape elements—hills, swales, stream valleys, road traces, fortifications, etc.—traversed and/or occupied by representative units of soldiers from each army that contested the battlefield. The project-review participants determine the location of the corridor by analyzing the maps, eyewitness accounts, and other elements of the park's database and then reconciling these during site visits to identify those movements and experiences that were typical of two or more representative, opposing units. The width of the corridor is based upon

the amount of undeveloped land needed by a typical modern visitor—walking along the center line—to experience the corridor's historical appearance and extrapolate this landscape image onto the developed portion of the site.

A non-development corridor offers advantages for both permit applicants and preservationists. An ideal implementation enables the former to develop the majority of land within the combat area and perhaps align the corridor along the least-developable land, since soldiers frequently attacked along wetlands, ravines, and other terrain features that afforded them concealment and protection. An ideal implementation also places the modern visitor physically atop a sample portion of the actual site, a situation that greatly enhances their ability to "feel" the historical events that occurred there.

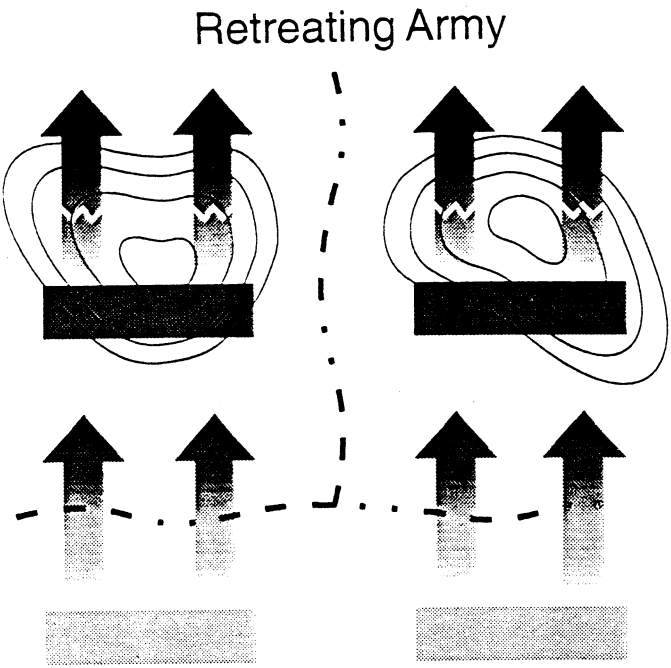
In 1993 and 1995, the park and the FFO utilized the corridor concept during two project reviews involving the scenes of attacks launched during the Chancellorsville Campaign of 1863. In both cases Wiggins issued permits after the applicants, the VASHPO, and the Advisory Council on Historic Preservation agreed that non-development corridors were the most appropriate measures to mitigate adverse effects to battlefield landscapes. Both corridors are open to the public. The FFO is now considering applying the concept in a third project review involving the scene of an attack launched during the Battle of Spotsylvania Court House in 1864 (Fitts 1995).

Non-development corridors unquestionably possess limitations as historic preservation options. They are appropriate primarily for combat sites where the repeated ebb and flow of troop movements occurred roughly parallel to the same line, arc, or angle. The military events of the 1860s, however, transpired during a shift from the rigidly linear tactics of the Napoleonic era to the fluid tactics common in World War Two. Many Civil War combats, especially those of extended duration, actually involved *combinations* of both. In the park's experience, moreover, the minimum effective corridor width is about 30 yards, which is impractical for many low-acreage developments.

A response to the former challenge perhaps involves the establishment of additional corridors along the paths of the additional types of movement. A response to the latter challenge involves the application of historical mitigation-banking.

In historical mitigation-banking, the applicant develops entirely one combat site but preserves entirely an adjoining or nearby combat site. The latter is of equal or greater historical significance and preferably encompasses the site of part of the same battle. The overall concept is inspired partly by a natural-resources planning measure—mitigating the loss of one wetland area by creating another—utilized by the FFO and other Corps of Engineers Field Offices around the country.

Historical mitigation-banking also



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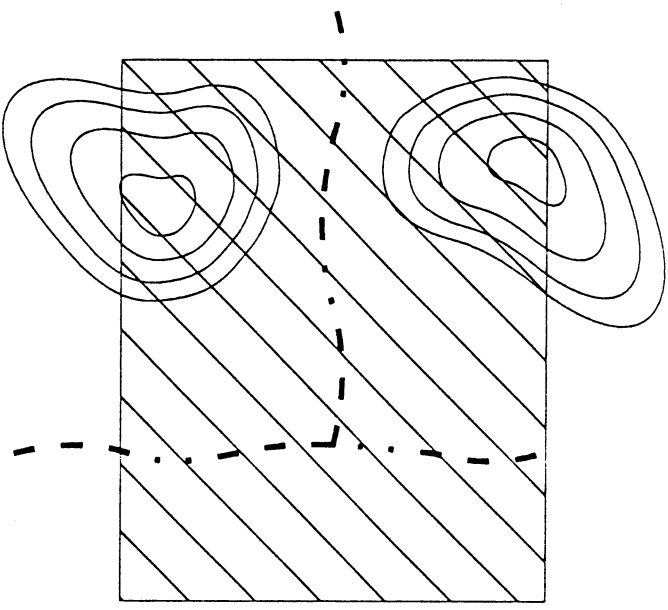
Hill

Creek

Proposed Development of the Battlefield, 1990's

2



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Area Proposed for Development

Non-Development Corridor on the Battlefield, 1990's

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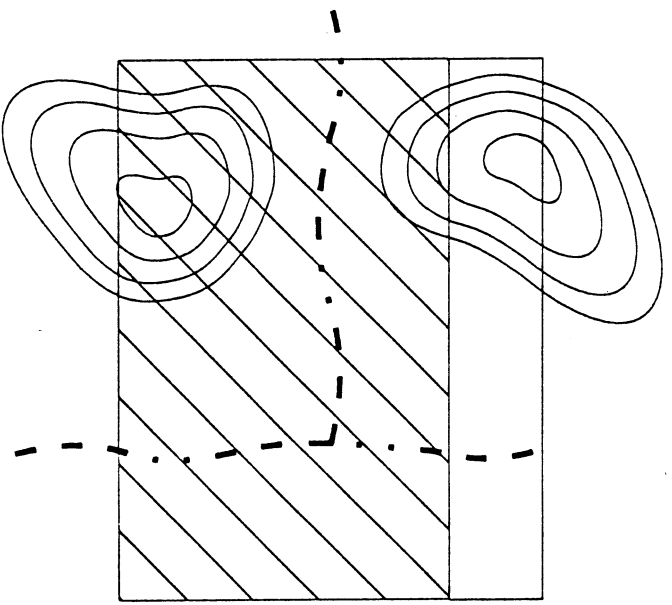

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Battlefield Terrain Altered by Development

Battlefield Terrain Preserved

Historical Mitigation ~ Banking on the Battlefield, 1990's

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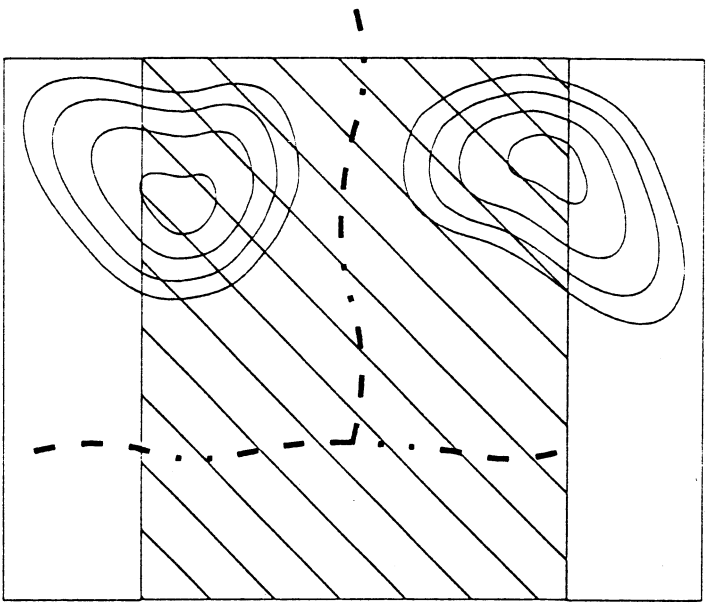

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Battlefield Terrain Altered by Development

Battlefield Terrain Preserved

offers advantages to both developers and preservationists. An ideal implementation enables the applicant to avoid plan modifications that incorporate battlefield preservation if the potential success of the development is severely limited by such modifications. An ideal implementation also results in the preservation of part or all of a battlefield whose characteristics, such as the absence of wetlands, would have otherwise placed it outside the jurisdiction of federal reviewers.

In 1994, the FFO and the park utilized historical mitigation-banking in a project review involving the scene of a Confederate attack and a Union counterattack launched during the Chancellorsville Campaign. The applicant, the City of Fredericksburg, proposed constructing a two-acre stormwater-retention pond in a portion of a city-owned ravine traversed by the attacks. To mitigate adverse effects to the battlefield landscape, the applicant agreed to establish a four-acre historical reserve on an adjacent slope of the same ravine. The city acquired both a permit and a key addition to what its planners hope will become a system of mini-parks, easements, and trails interpreting Civil War events in the area.

The option of mitigation-banking has its share of limitations. For one, not all permit applicants possess spare battlefield land near or adjoining their project areas. Also, mitigation-banking places an even higher ethical penalty upon historical error than the corridor concept. Specifically, project-review participants must be doubly sure that the second site is truly of equal or greater significance before acquiescing to potentially irreversible alterations proposed for the first site. The passage of time reveals flaws in all historical endeavors; mitigation-banking is a gamble that these flaws are largely inconsequential. The risk, however, clearly exists in inverse proportion to the scope, depth, and utilization of a historical database.

Both concepts also possess limitations in common. First, they are not equivalent to the *in toto* preservation achieved when a lands trust or other group purchases a battlefield from a willing, private-sector owner. Crucial real estate acquisitions such as that recently negotiated between the Association for the Preservation of Civil War Sites and the owners of the site of the 1863 Battle of Brandy Station often require years of painstaking effort and might be derailed by a hasty application of less comprehensive measures. Second, application of the two concepts is appropriate mainly for project reviews involving Section 106 of the National Historic Preservation Act, not ordinances and laws such as the Department of Transportation Act of 1966 offering more specific or explicit preservation prescriptions, prohibitions, and guidelines. Third, the landscapes set aside through historical mitigation-banking or the establishment of non-development corridors are of questionable value unless they enjoy maximized, permanent protection. Such protection

is enhanced, for example, when easements are held by a pre-existing, third-party organization dedicated specifically to battlefield preservation.

Essentially, the concepts devised and applied by the FFO-park partnership are appropriate for battlefields at which comprehensive preservation is not an option for the foreseeable future. Non-development corridors and historical mitigation-banking are efforts to apply the CFR mandate for "reconciling the interests" to a currently problematic facet of historic preservation. These are stop-gap measures: the park and FFO eagerly await the day when lands trusts or permit applicants themselves routinely initiate the *in toto* preservation of battlefields prior to entering the project-review phase. In Georgia, Tennessee, and Virginia, for example, the American Battlefield Protection Program and the Natural Lands Trust are working with selected counties and private landowners to establish preservation procedures at the local-government and private-sector levels by, among other actions, capitalizing upon the value of Civil War sites as real-estate marketing assets (Higgins 1996; Pacelle 1994). Until these efforts reach maturity, however, federal officials must help devise landscape preservation measures at the sites of tragic battles past without provoking fruitless battles present.

Special thanks to: the Fredericksburg Field Office, U.S. Army Corps of Engineers; and to the Department of Planning and Community Development, City of Fredericksburg, Virginia.

Endnote

1. "Battlefield" and "combat area" are hereafter used interchangeably

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