

Briefing Statement

Bureau: National Park Service

Issue: Potential Contact by Senator Mitch McConnell to either Secretary or Director on -Violations of the Park Service Resource Protection Act by NTS Corporation, Wilderness Battlefield-

Park Site: Fredericksburg and Spotsylvania National Military Park

Date: October 14, 2004

Background: In 1989, the National Park Service executed a land swap with the NTS Corporation (a Kentucky based corporation to both facilitate NTS development of the Fawn Lake subdivision and preserve additional lands then along the park boundary on the Wilderness Battlefield. As part of this land swap, the National Park Service retained a protective easement over three tracts that now comprise the main entrance into Fawn Lake. That easement predominantly protects a line of Civil War trenches that run the length of the parcel conveyed in fee to NTS Corporation.

In July 1999, NTS Corporation violated the easement and destroyed a 100-foot-long of earthworks—an area of protected landscape totaling about .74 acre. By authority of the Park Service Resource Protection Act (PSRPA--104 Stat. 379, 16 U.S.C. 19jj), the NPS pursued recovery of damages totaling \$96,000. NTS Corporation agreed to an out-of-court settlement of \$60,000.

The Incident: In June 2001, NTS Corporation employees again entered the protected area and damaged historic resources violation of the easement. Tree removal resulted in the driving of machinery across the existing earthworks, resulting in .452 acre of damage to earthworks and buffer zones. The damages incurred ranges from vehicular damage (ruts) from tire treads. This resulted in heavily disturbed soils ranging from 6” to 8” deep.

Taken in tandem with the earlier destruction, the NPS determined that the additional damaged constituted total functional loss of the protected line of earthworks south of the area damaged in 1999. Again, NPS has sought recovery of damages under the PSRPA. In 2004, National Park Service submitted a claim totaling [REDACTED] to the NTS Corporation.

Public Law 101-337, Park System Resource Protection Act requires the Secretary of the Interior to assess and monitor injuries to park system resources. The Act specifically allows the Secretary of the Interior to recover response costs and damages from the responsible party (RP) causing the destruction, loss of or injury to park system resources.

Current Status: To date, the National Park Service has not received a formal response to the most recent PSRPA claim. Park Service Solicitors intend to file the claim with the courts in the coming weeks.

Position of Interested Parties: The facts and allegations of the case have not been made public. The response of the NTS Corporation is not known. Informally, NTS representatives have said they will seek a political remedy through Mitch McConnell of Kentucky (where NTS is based.) They intend to do so soon, since the Solicitor's Office must file soon. The National Park Service considers the case as a clear violation of the Park Service Resource Protection Act, subject to the recovery of damages, as stipulated by that law.

Department/Bureau Prospective: Solicitors of the National Park Service are seeking recovery of damages, calculated in accordance with methods approved by the courts in prior PSRPA cases.

Funding Requirements: None

Contact: Russell P. Smith, Superintendent
Fredericksburg and Spotsylvania NMP
120 Chatham Lane
Fredericksburg, VA 22405
(540) 371-0802