



# United States Department of the Interior



NATIONAL PARK SERVICE  
Fredericksburg and Spotsylvania  
National Military Park  
120 Chatham Lane  
Fredericksburg, Virginia 22405

IN REPLY REFER TO:

F50

December 16, 2002

## Memorandum

To: Associate Director, Natural Resources Stewardship and Science, WASO  
Through: Regional Director, Northeast Region *Shelton for Rust, 12/26/02*  
From: Acting Superintendent, Fredericksburg and Spotsylvania NMP  
Subject: Concurrence on Settlement of Damage Claims for NTS/Fawn Lake II,  
July 11, 2001

The attached claim report presents a summary of the injuries and damages associated with the destruction of Civil War earthworks by NTS/Fawn Lake on Longstreet Drive in Fredericksburg and Spotsylvania National Military Park on July 11, 2001. The claim includes, but is not limited to, estimates of our past response and assessment costs [redacted] and compensation for visitor and archeological interim lost services [redacted]

We will seek recoveries for these damages using the provisions of the Park System Resource Protection Act (16 U.S.C. 19jj) and request your concurrence on the claim amount listed below. The Act allows the park to recover response and damage assessment costs and monies for the restoration, replacement or acquisition of equivalent resources for injuries to or loss of park resources and services. Therefore, in settlement of these damages, we are seeking to recover [redacted] which will be applied to the aforementioned costs and projects to compensate for lost use of the destroyed earthworks.

I request that you advise the Solicitor of these findings and have them begin negotiations with the responsible party and/or refer the case to the U.S. Department of Justice for litigation.

*John Hennessy*  
John Hennessy

Attachment

NATIONAL PARK SERVICE  
NTS/Fawn Lake Earthworks II  
~~Fredericksburg and Spotsylvania National Military Park~~  
July 20, 2001

## I. BACKGROUND

**THE FEDERAL INTEREST:** In a 1989 transaction, the National Park Service (NPS) conveyed (for consideration) fee title to a section of Longstreet Drive (tract 04-113) while retaining an easement over the tract (see the deed of the United States of America to NTS Corporation dated August 25, 1989, and recorded in Spottsylvania County Courthouse, Deed Book 875, Page 83). A second deed (Deed Book 875, page 62) also includes references and restrictions for tract 04-113. These deeds reserve to the United States Government the "protection in perpetuity" of Civil War earthworks along the East Side of the original Longstreet Drive and archeological resources throughout tract 04-113. The easement documents place restrictions and responsibilities on NTS and its successors with respect to construction activity along Longstreet Drive. Those responsibilities include avoidance of earthworks and stipulate that all artifacts are the property of the United States Government. The deed instruments require that the work within tract 04-113 "will be monitored by a National Park Service approved archeologist during constructing activity" and that "*The Grantor [NTS] shall give the Grantee [NPS] thirty days notice of proposed construction operations in tract 04-113.*"

**THE VIOLATION:** Park rangers patrolling the Wilderness Battlefield area discovered extensive destruction along Longstreet Drive on the Wilderness Battlefield. Subsequent investigation revealed that the activity occurred in violation of the terms of the easement retained by the National Park Service on tract 04-113. For all work done along the easement it is stipulated that monitoring, protection and conveyance to the United States Government all archeological resources.

Tree removal resulted in the driving of machinery across the existing earthworks. In this process, the initial investigation reports that the injured areas include .452 acres of damage. A subsequent assessment and mapping reveals approximately **23,879.54 square feet** of earthworks and buffer zones as receiving damage. The damages incurred ranges from vehicular damage (ruts) from tire treads. This resulted in heavily disturbed soils ranging from 6" to 8" deep.

The damaged north area of archeological concern is 1,437 sq. feet. The southern portion of archeological concern is 12,066 sq. feet. There is also extensive damage to a third area of 9069 sq. feet, which is located in the 20-ft. buffer zone. The total area requiring archeological data extraction at the time of this report is based on the two areas damaged, and does not include the buffer zone. The area requiring archeological data recovery is approximately 13,503 square feet, x .0929 or 1,254 square meters.

The claim for this incident is as follows:

Category	Cost
Response and assessment	[REDACTED]
Loss of Use	[REDACTED]
Historical Interpretation Offsite	[REDACTED]
Archeological Survey Offsite	[REDACTED]
United States Administrative Fee	[REDACTED]
<b>Total</b>	[REDACTED]

## II. LEGAL AND POLICY FRAMEWORK FOR THE CLAIM

Public Law 101-337, Park System Resource Protection Act (104 Stat. 379, 16 U.S.C. 19jj) 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. This Act provides that any monies recovered by the NPS may be used to reimburse response costs and damage assessments and to restore, replace or acquire equivalent resources.

Further, in 1916 Congress created NPS in the Department of the Interior to:

promote and regulate the use of the Federal areas known as national parks, monuments, and reservations..... by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (NPS organic act, 16 USC 1)

This language lies at the heart of national park system management philosophy and policy. Congress's mandate to the Park Service has been expressed as conserving resources while providing for their enjoyment by today's citizens in a manner that will leave them unimpaired for future generations. The word "unimpaired" plays an important role in the conservation of resources and providing for present-day public enjoyment. Physical resources, such as wildlife and geologic features, cultural resources, such as archeological artifacts and cultural landscapes, and intangible values, such as scenic vistas and solitude, may be impaired. Whether an individual action or situation is or is not an "impairment" is a management determination. In reaching this decision, NPS management considers such factors as the spatial and temporal extent of the impacts, the resources being impacted and their ability to adjust to those impacts, the relation of the

impacted resources to other park resources, and the cumulative as well as the individual effects.

Fredericksburg and Spotsylvania National Military Park was established by Congress in 1927 to "commemorate the Civil War battles of Fredericksburg, Spotsylvania Court House, Wilderness and Chancellorsville...and to mark and preserve for historical purposes the breastworks, earthworks, gun emplacements, walls, or other defenses or shelters used by the armies..."

The earthworks along Longstreet Drive are typical of the type of resources that are at the heart of the Park's legislative purpose. The earthworks were constructed by Confederates at the conclusion of the Battle of the Wilderness; and constitute the Confederates' last line before they commenced the dramatic march to Spotsylvania Court House on the night of May 7, 1864. The intermittent and diminutive nature of the works here speaks to the harried, unsteady nature of the Wilderness fighting. These works were constructed hastily largely to protect sleeping men. They were constructed amidst a burning forest, without careful planning. The Confederates followed a hastily cleared woods road ("Pendleton's Road") southward to Catharpin Road, thence via Shady Grove Church Road to Spotsylvania. The remnants of Pendleton's Road are clearly visible both within the median strip of Longstreet Drive and along its eastern edge. Collectively, these earthworks and Pendleton's Road embody the final chapter of the Battle of the Wilderness.

### III. BASIS OF THE CLAIM

The destruction of these works has permanently foreclosed their use by Park visitors and for archeological research. Typically, three specialized tours of the earthworks, containing a total of approximately 150 visitors, are conducted each year. These visitors have a keen interest in the location and layout of the earthworks, and will likely suffer a diminished experience due to their destruction. Additionally, any archeological information and resources that may have been available to the public through research of the earthworks and surrounding archeological resources have now been lost in perpetuity. That loss diminishes the ability of NPS to interpret the historic battlefield and actions for the visiting public.

Researcher Noel Harrison (1999) has related that intact resources-types in the NTS-disturbed area could have answered or helped answer the following unanswered historic questions:

1. How far did Anderson's men withdraw from their line of battle before encountering a) the fires and the resulting, crucial incentive to depart immediately and b) the road? Measuring distances between subsurface charcoal or ash deposits in an 1860's archeological context and surviving earthworks might answer this question. Determining the presence or absence of such deposits along the road trace partially obliterated by the

NTS might also provide data and help confirm whether that trace was the same road used by the Confederates. The nearer the fires and a convenient route-of-march towards Spotsylvania Court House, the faster Anderson's probable departure.

2. Did Early's men have a road available to follow for their entire march south of the Plank Road, or were they limited to thrashing forward along Anderson's earthworks during the initial part of that journey? Artifacts found along the road trace and nearby earthworks associated with state regiments present in Early's but not in Anderson's army corps, could answer this question. The availability of a road-extending south from the Plank Road would have had a significant effect upon Early's speed.

3. How strong was the center of Anderson's position, did Early's men attempt to rectify any weakness there after Anderson's departure, and did the fires influence its defense by either army corps? Locating surviving earthworks (or their footprint stains) and Early-associated artifacts, could answer this question. A neglect of the fortification and manning of the position's center by both Anderson and Early might indicate that the fires fortuitously kept the Confederate army's south flank relatively unsettled and mobile and/or that Robert E. Lee was willing to take considerable risks in exchange for the ability to launch and maintain a rapid march against his opponent. A determination that the road used by Anderson and/or Early was situated partly beyond the protection of their earthworks, on the side nearest the enemy, would provide further evidence of the fire's ferocity and/or such a gamble by Lee.

While historically these resources have been a finger-like extension southward from the main park unit, the proposed acquisition of the Longstreet flank attack area to the east of Longstreet Drive would put these earthworks in an entirely new physical and interpretive context. These works are integrally related to the resources on the Longstreet Flank Attack site, and indeed will derive added interpretive significance if or when that site is preserved. The destruction cited here diminishes the ability of the Longstreet Drive resources to function in a broader, more useful realm.

Therefore in accordance with the Congressional mandates found in the NPS Organic Act, the enabling legislation establishing Fredericksburg and Spotsylvania Battlefields Memorial National Military Park, the easement reserving to the United States certain interests in historic and archeological resources along Longstreet Drive, NPS has determined that the injuries to the earthworks and the potential loss of archeological resources impair the historic, archeological, scenic and scientific values of the National Park System.

Therefore, the park's claim will include response and assessment costs, and compensation for the lost use by the public of the knowledge of historical context into perpetuity.

Exemption 5 (pages 5-9)