



**Cleveland-Cuyahoga Port Authority, Department of the Army Permit Processing
No. 1999-01471(4)**

Section 10 of the Rivers and Harbors Act
Regulatory

Location

- Cleveland Harbor, City of Cleveland, Cuyahoga County, Ohio

Project Description

- Proposed dredging of 15,000 cubic yards of material for access to the Cleveland Bulk Terminal

Congressional Interests

- Representative Marcia Fudge D-OH-11
- Senator Rob Portman R-OH
- Senator Sherrod Brown D-OH

Project Sponsor/Customer

- Cleveland-Cuyahoga Port Authority

Project Manager

- Mark Scalabrino, (716) 879-4327

Current Status

The Cleveland-Cuyahoga County Port Authority (CCPA) is considering locations along the Cuyahoga River to implement a public display of a bucket and leg of the Hulett ore unloaders. The CCPA proposed to place the bucket and leg on the federal breakwall at the mouth of the Cuyahoga River; however, this proposal did not receive approval from the Buffalo District Operations Branch.

Issues

The CCPA has objected to the terms of the numerous draft Memorandum of Agreement (MOA), particularly due to the lack of a financial cap on the cost to administer the stipulations of the MOA. The CCPA and consulting parties also objected to the sequencing of the mitigation options, preferring that the working group be allowed to determine and implement a public display of the bucket and leg of both Hulett's first, then donate a bucket and leg to the GLSC as fallback option should the efforts of the working group not be successful.

Path Forward

The Corps is amenable to the sequencing of mitigation options preferred by the CCPA and consulting parties provided a framework can be developed to add certainty to the working group process. The Corps will continue to work with the CCPA and consulting parties to incorporate acceptable language regarding the framework of the working group into the MOA, and to evaluate potential locations for the public display of a bucket and leg of the Hulett ore unloader. The Section 106 consultation process will conclude when the Corps, OHPO, and the ACHP sign the MOA. After the MOA is signed, the Corps can complete its environmental assessment and make a final permit decision. The MOA will be made part of any permit that the Corps may issue to the Port Authority for the proposed dredging.

Background

The CCPA submitted an application to dredge approximately 15,000 cubic yards of material from an area adjacent to the Cleveland Bulk Terminal dock face in Cleveland Harbor. The Cleveland Bulk Terminal is a property listed in the National Register of Historic Places. The Buffalo District issued a permit for this project in 1999; however, the permit was subsequently revoked as a result of the U.S. District Court's decision which found procedural errors in the evaluation of impacts to historic properties. Historic properties include the Hulett cargo unloaders, the power house, the machine shop and the shunt engines. All items were destroyed or removed from the property except for two of the four Hulett's which were dismantled and stored. The "Save the Hulett's" organization is dedicated to the preservation and reassembling of the Hulett cargo unloaders and has been very active in this matter. The current

application is a re-submittal of the previous dredging proposal. A public notice for this application was published on 3 March 2006, and expired on 1 April 2006. The Buffalo District determined that the proposed dredging is part of a larger expansion project at the Cleveland Bulk Terminal and that the expansion has had an adverse effect on historic properties. Several historic preservation societies responded to the public notice and requested consulting party status pursuant to Section 106 of the National Historic Preservation Act (NHPA). As a result, the project is being coordinated with the consulting parties in order to resolve adverse effects to historic properties before a final permit decision is made. The ACHP determined that it will participate in the consultation process, and further recommended that the Corps determine if Section 110(k) NHPA applies to this undertaking. Section 110(k) prohibits a Federal agency from granting a permit to an applicant who has significantly adversely affected a historic property with the intent to avoid Section 106 NHPA consultation. A meeting was held with the applicant on 18 December 2006 to discuss the consultation process and possible mitigation measures for the historic properties. Another meeting was held on 21 February 2007 to further discuss mitigation possibilities with the applicant and the consulting parties. On 8 June 2007, the Corps determined that Section 110(k) applies to this undertaking; however, the Corps recommended that Section 106 consultation continue with the development of a MOA to resolve adverse effects to the historic properties. This determination was sent to the ACHP for their concurrence. In a letter dated 6 August 2007, ACHP responded that they concur with the Corps' 110(k) NHPA determination; however, the ACHP did not necessarily agree with, but respected, the Corps' decision to continue with the historic properties consultation process. An additional consulting party meeting was held on 12 October 2007 to further discuss mitigation measures for the historic properties and several proposed Memoranda of Agreement. The applicant did not submit the draft MOA, which they had agreed to do during a 12 October 2007 meeting, until 15 June 2010. The Corps forwarded the draft MOA to consulting parties on 15 July 2010 and requested comments by 20 August 2010. The Corps conducted a consulting parties meeting on 4 November 2010 to discuss the historic properties mitigation options outlined in the CCPA's 15 June 2010 submittal. Of the options discussed, the CCPA's proposal to permanently display the leg and bucket from one Hulett in the cargo hold of the Great Lakes Science Center's steamship William G. Mather appears to hold the greatest potential for implementation. The Corps completed a draft Section 106 consultation summary document and distributed it to the consulting parties on 22 July 2011. The summary document recommended that the proposal to incorporate a "bucket" and "leg" from one of the Hulett's ore unloaders at the Great Lakes Science Center be included in the MOA. The Corps circulated a draft MOA on 8 February 2012, conducted a consulting party meeting on 22 March 2012, and circulated additional draft MOA on 27 April 2012, 3 August 2012, 16 November 2012, and 12 July 2013 to further evaluate this option.

The Corps circulated a final Memorandum of Agreement (MOA) to the consulting parties on 21 August 2013 for signature. The Cleveland-Cuyahoga County Port Authority (CCPA) and several consulting parties objected to the terms of the MOA and refused to sign. As a result of these concerns, the Ohio Historic Preservation Office (OHPO) and the Advisory Council on Historic Preservation (ACHP) also declined to sign the MOA. The MOA would require the Cleveland-Cuyahoga County Port Authority to relocate a bucket and leg from a Hulett ore unloader to the Great Lakes Science Center (GLSC) and incorporate it into a museum display in the steamship William G. Mather. The MOA also requires the Port Authority to convene a working group for the purpose of formulating a plan for public display of elements of a Hulett ore unloader along the Cuyahoga River



Photo Credit: Jerry Mann

