



Public Notice

Applicant:

Cleveland-Cuyahoga
County Port Authority

Date:

Published: March 3, 2006
Expires: April 1, 2006

**U.S. Army Corps
of Engineers**

In Reply Refer To:

Buffalo District **CELRB-TD-R RE:** 1999-01471(4) **Section:** OH 10

Application for Permit under Authority of
Section 10 of the Rivers and Harbors Act of 1899.

The Cleveland-Cuyahoga Port Authority, 1375 East Ninth Street, Suite 2300, Cleveland, Ohio 44114, has submitted an application for a Department of the Army permit to perform maintenance dredging in Cleveland Harbor, Lake Erie, at the Cleveland Bulk Terminal, located at 5400 Whiskey Island, in the City of Cleveland, Cuyahoga County, Ohio 44102.

The applicant proposes to dredge approximately 15,000 cubic yards of material from a 2,000' long x 75' wide area along the dock face. The area is proposed to be dredged to a bottom elevation of 542.2' International Great Lakes Datum, 1985 (27' below Low Water Datum). The dredged material will be placed in the Corps of Engineers' Confined Disposal Facility in the Cleveland Harbor East Basin.

The applicant's stated project purpose is to allow large commercial vessels to dock at the Cleveland Bulk Terminal while loading or unloading.

Location and details of the above described work are shown on the attached maps and drawings.

Questions pertaining to the work described in this notice should be directed to ~~Mark W. Scalabrino, who can be contacted by calling (716) 879-4327, or by e-mail at: mark.w.scalabrino@usace.army.mil~~

The applicant has certified that the proposed activity complies with Ohio's approved Coastal Zone Management Program and will be conducted in a manner consistent with that program. Any comments on the consistency of the proposed activity with Ohio's Coastal Zone Management Program should be forwarded to:

Ms. Mindy Bankey
Ohio Department of Natural Resources
Consistency Coordinator
Office of Legislative Services
1930 Belcher Drive, Bldg D-3
Columbus, Ohio 43224-1387
Telephone (614) 265-6836
FAX (614) 261-9601
e-mail: mindy.banky@dnr.state.oh.us

The following authorization(s) may be required for this project:

Water Quality Certification (or waiver thereof) from the Ohio Environmental Protection Agency.

The proposed dredging is considered to be part of the expansion plan for the Cleveland Bulk Terminal, a property listed in the National Register of Historic Places as the Pennsylvania Railway Ore Dock. The entire historic property is within the area of potential effects, as shown on Sheet 2 of 4. As part of this expansion, the applicant removed or demolished the historically contributing resources in order to increase the tonnage of bulk material that could be stored on-site. Two Hulett Ore Unloaders were demolished, two Hulett Ore Unloaders were dismantled and are stored on-site, two shunt engines were demolished, two shunt engines were transferred to museums, and the machine shop, storage shed, office, shower/lunchroom, and power house were all demolished. The Corps has determined that the removal of the historically important structures from the project site constitutes an adverse effect on the Pennsylvania Railway Ore Dock. Further, the Corps has determined that the scope of the dredging would not be as extensive as currently proposed but for the removal of the historic structures and the resulting expansion of available storage capacity.

The on-site storage of the two dismantled Hulett Ore Unloaders and transfer of two shunt engines were part of the overall mitigation plan approved by the Cleveland Landmark Commission prior to the removal of the historic structures. The mitigation plan also indicates that the two dismantled unloaders are available to be reconstructed should another entity provide land and financing for the project.

This notice constitutes initiation of consultation with the Ohio Historic Preservation Office (SHPO) per Section 106 of the National Historic Preservation Act. All currently available historic resource information pertaining to this proposed project has been provided to the SHPO. Additional information concerning historic properties should be submitted to the Corps before the end of the comment period of this notice. The Corps will forward that information to the SHPO for their review.

In addition, available evidence indicates that the proposed work will not affect a species proposed or designated by the U.S. Department of the Interior as threatened or endangered, nor will it affect the critical habitat of any such species.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments should be sent to the U. S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, and should be marked to the attention of Mark W. Scalabrino, or by e-mail at: mark.w.scalabrino@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

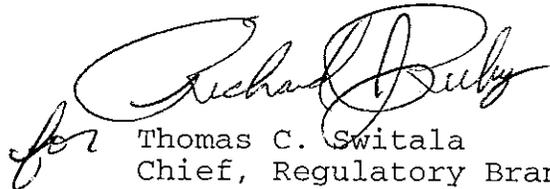
Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a

hearing, in the same manner and time period as other comments.

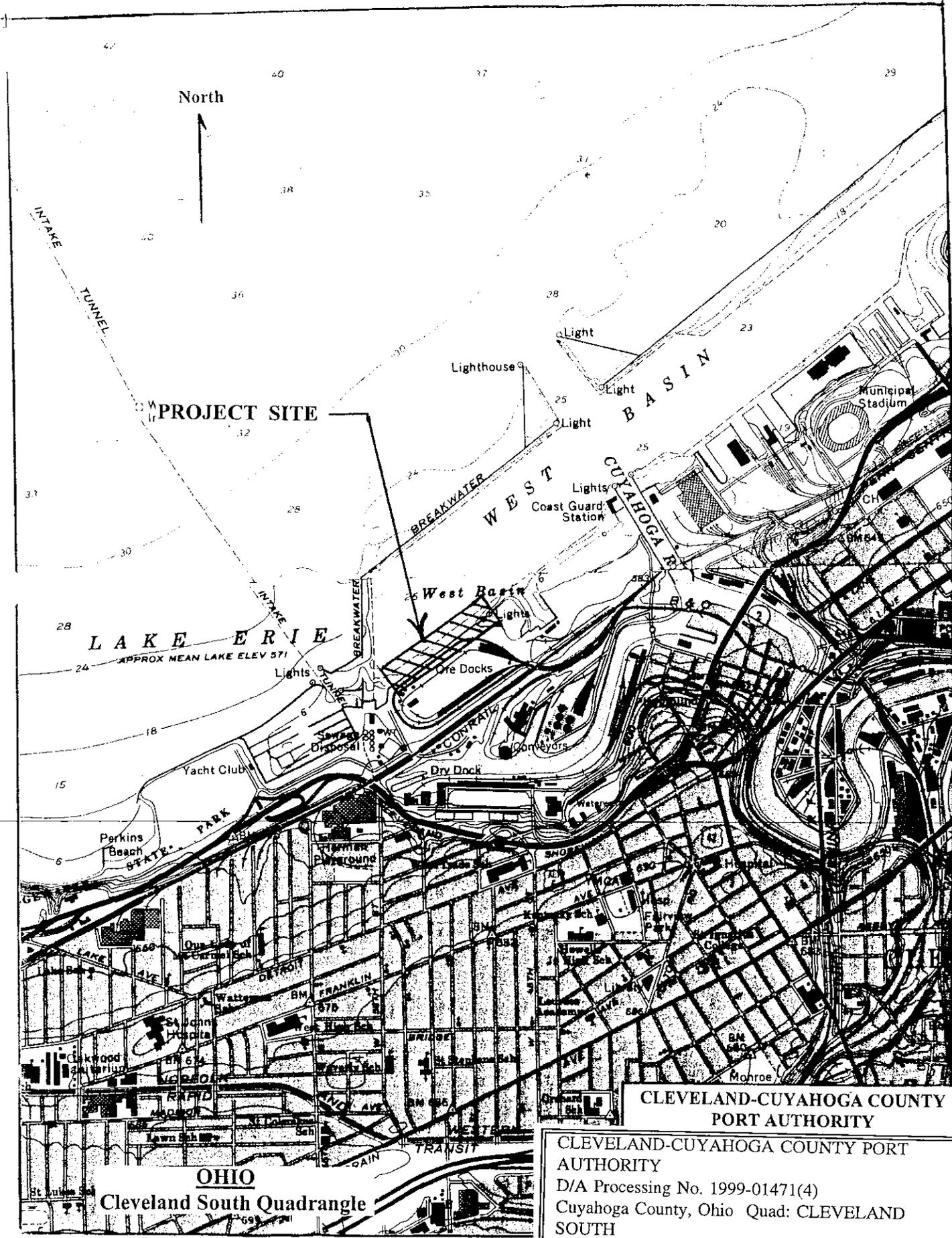
Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

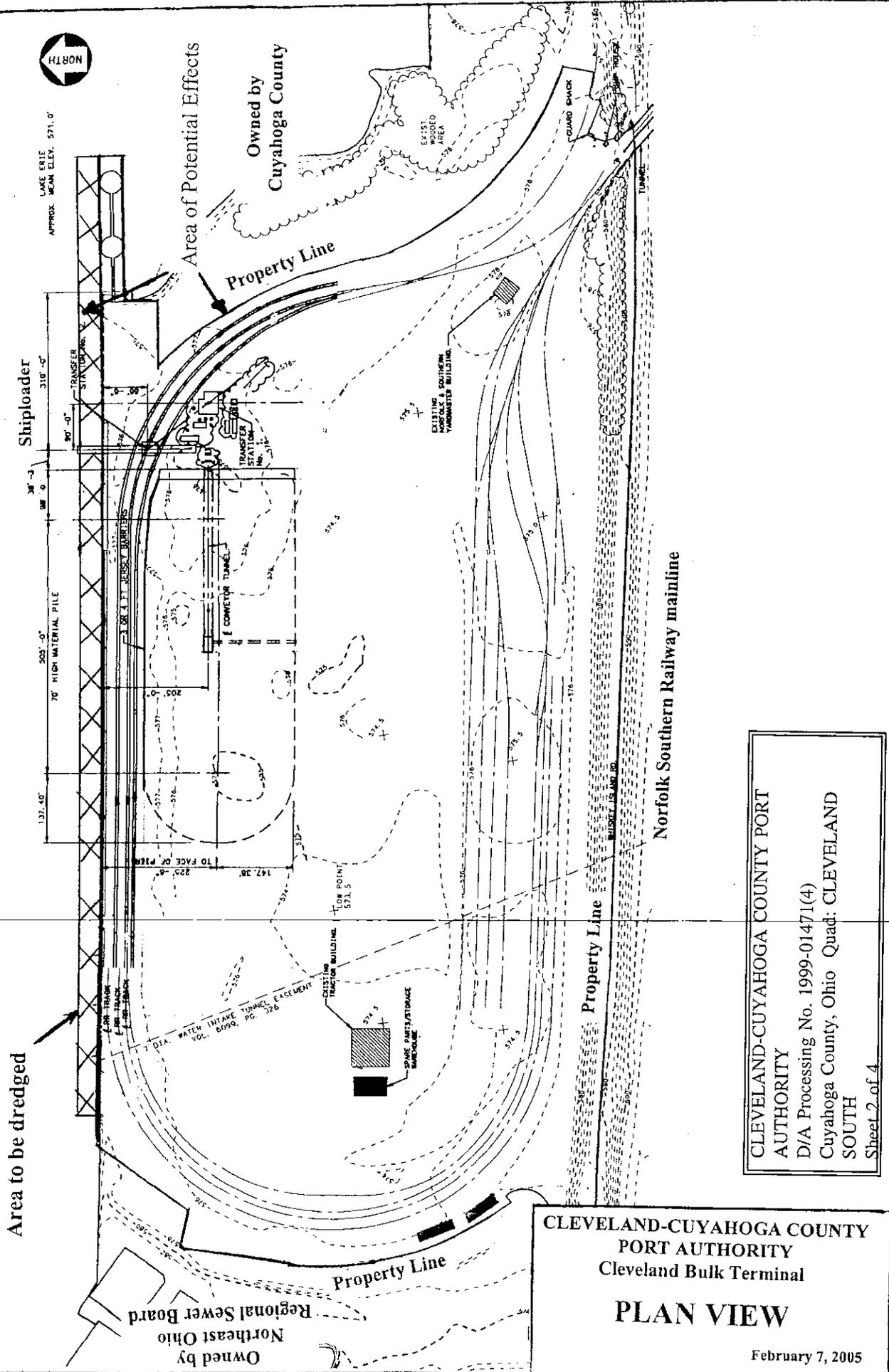
The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.


for Thomas C. Switala
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.



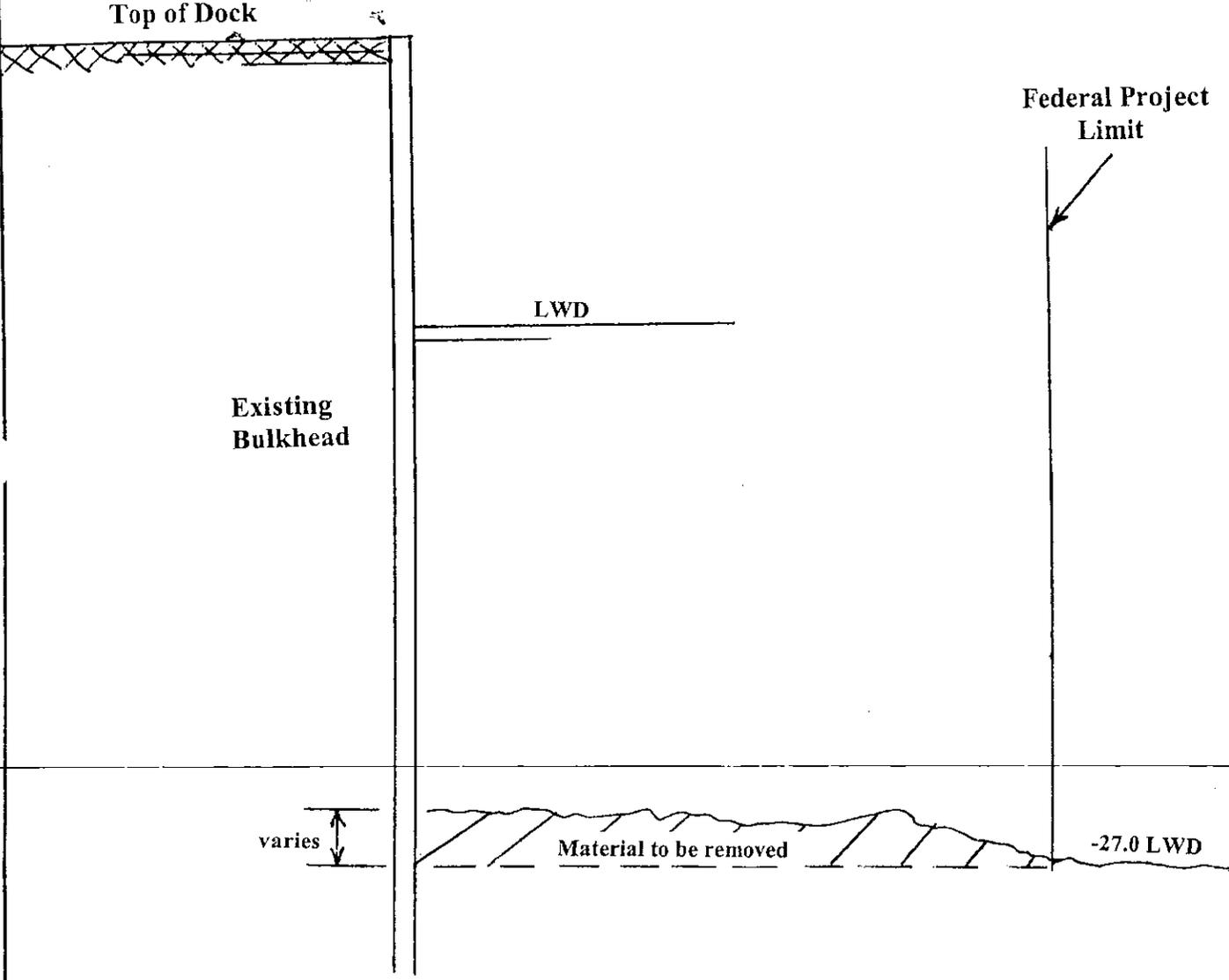
CLEVELAND HARBOR



CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY
 D/A Processing No. 1999-01471(4)
 Cuyahoga County, Ohio Quad: CLEVELAND SOUTH
 Sheet 2 of 4

CLEVELAND-CUYAHOGA COUNTY PORT AUTHORITY
 Cleveland Bulk Terminal
PLAN VIEW
 February 7, 2005

Cleveland Harbor



No Scale

CLEVELAND-CUYAHOGA COUNTY PORT
AUTHORITY
D/A Processing No. 1999-01471(4)
Cuyahoga County, Ohio Quad: CLEVELAND
SOUTH
Sheet 3 of 4

CLEVELAND-CUYAHOGA COUNTY
PORT AUTHORITY
Cleveland Bulk Terminal
TYPICAL SECTION

February 7, 2005

Scalabrino, Mark W LRB

From: Megan_Seymour@fws.gov
Sent: Tuesday, March 28, 2006 2:04 PM
To: Scalabrino, Mark W LRB
Subject: Cleveland-Cuyahoga County Port Authority 1999-01471(4)

Mark,

The Service has reviewed the above Public Notice, and we have no objection to the proposal to maintenance dredge the existing Cleveland Bulk Terminal docking area, located at 5400 Whiskey Island, Cleveland, Cuyahoga County, Ohio. All dredged material will be disposed of at the existing Corps of

Engineers Confined Disposal Facility. The project lies within the range of the Indiana bat, bald eagle, and piping plover, federally listed endangered and threatened species. Due to the project type, location, and onsite habitat, none of these species would be expected within the project area and no impact to these species is anticipated. This concludes the need for further action on this project as required under the Endangered Species Act of 1973, as amended. If project plans change or portions of the project were not evaluated, we recommend you contact this office again. Please let me know if you have any questions.

Sincerely,

Megan Seymour

Wildlife Biologist

U.S. Fish and Wildlife Service

Ecological Services Field Office

6950 Americana Pkwy.

Suite H

Reynoldsburg, OH 43068

(614) 469-6923 ext. 16

(614) 469-6919 fax



"MESKWAKI NATION"

Sac & Fox Tribe of the Mississippi in Iowa

349 Meskwaki Road, Tama, IA 52339-9634 • (641) 484-4678 FAX (641) 484-5424

March 14, 2006

US Army of Corps of Engineers, Buffalo District
Attn: Mr. Mark W. Scalabrino
1776 Niagara Street
Buffalo, NY 14207

Dear Mr. Scalabrino:

Thank you for your notice concerning the project:

CELRB-TD-R-1999-01471(4) Section OH 10

At this time, the Historical Preservation Department of the Sac and Fox of the Mississippi in Iowa has determined the above listed has:

- No interest in the area geographically
- No comment on the proposed undertaking
- No objections. However, if human skeletal remains and/or any objects falling under NAGPRA are uncovered during construction, please stop immediately and notify the NAGPRA Representative, Johnathan L. Buffalo.
- Have an objection or require additional project information. Please send the following:

Sincerely,

Johnathan L. Buffalo
Historical Preservation Coordinator
Sac and Fox of the Mississippi in Iowa

Cc: File

2006 MAR 28 AM 7:36



PORT OF
CLEVELAND

2006 MAR 31 PM 12:38

Cleveland-Cuyahoga
County Port Authority

One Cleveland Center
1375 E. Ninth St., Suite 2300
Cleveland, Ohio 44114-1786

216.241.8004 tel
216.241.8016 fax
www.portofcleveland.com

March 24, 2006

Mr. Mark Scalabrino
U.S. Army Corps of Engineers
1776 Niagara St.
Buffalo, NY 14207-3199

RE: CLEVELAND BULK TERMINAL (CBT)
APPLICATION FOR MAINTENANCE DREDGING PERMIT

Dear Mr. Scalabrino:

The Cleveland-Cuyahoga County Port Authority's (Port) has reviewed the Public Notice and objects to your statement, "...the scope of the dredging would not be as extensive as currently proposed but for the removal of the historic structures and the resulting expansion of available storage capacity." This statement is misleading and can be disputed by reviewing the CORPS' 2005 soundings in the Cleveland Harbor. The soundings indicate that the harbor bottom west of our proposed area has been previously dredged, with depths ranging from 18 to 24 feet and are close to the desired 27'-0". This can further be substantiated by noting the former location of the hulett runway shown on Attachment 10 that accompanied our permit request. The photo (taken about 1960) shows that a large portion of the area to the west must have been dredged to accommodate loaded vessels.

~~Please give the above consideration in your final review of our permit request. If you have any questions, please call me.~~

Very truly yours,

E. M. Jacobsen, Jr.
Construction/Engineering Manager

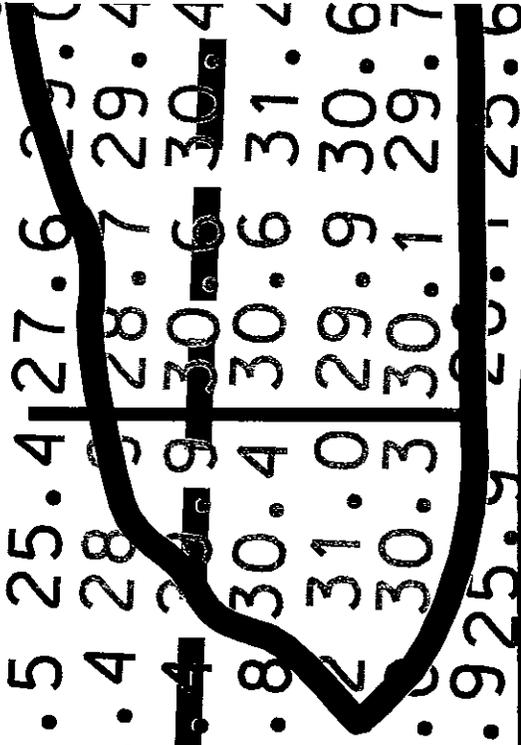
Enclosures
EMJ:dm

cc: CBT-CORPS-011
Rose Ann DeLeon, PORT w/o enclosures
Eric Hirsimaki, PORT w/o enclosures

11.3	17.9	18.7	17.7	18.4	19.1	19.6	22.3	26.4
12.2	19.0	19.4	18.3	19.0	19.1	19.8	23.0	27.4
12.4	20.1	20.6	18.4	19.3	19.5	20.0	23.8	27.4
11.2	22.5	21.3	19.0	19.2	20.0	21.6	24.5	27.5
2.4	23.8	21.3	20.3	20.1	21.2	23.9	25.0	27.5
2.2	24.5	20.2	20.2	20.4	21.6	23.6	25.6	27.4
2.2	25.5	22.7	20.8	21.1	21.8	22.6	25.6	27.6
2.6	26.9	22.1	20.9	21.9	22.5	25.4	27.6	29.0
2.7	26.7	21.4	21.5	21.8	24.4	28.9	28.7	29.4
3.7	26.9	20.0	21.6	21.9	26.4	30.9	30.6	30.4
2.6	27.1	20.0	21.0	23.3	26.8	30.4	30.6	31.2
9.9	28.2	18.2	21.8	24.6	28.2	31.0	29.9	30.6
9.1	29.2	14.3	18.5	22.9	27.9	30.3	30.1	29.7
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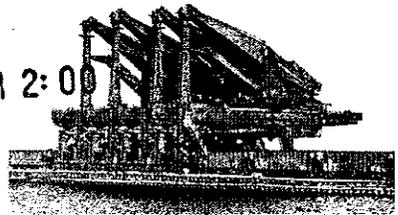
667.0

225'



Committee to Save Cleveland's Hulett's

P.O. Box 32700 • Cleveland, OH 44132-0700
Tel (216) 378-0535 • Fax (440) 835-9441



A COMMITTEE OF
CITIZENS' VISION

E-mail: savehulettscitizensvision.org
www.citizensvision.org/savehulettscitizensvision.org

29 March 2006

Mark W. Scalabrino
United States Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, NY 14207-3199

Re: PUBLIC NOTICE # 1999-01471(4) Section OH 10 Published March 3, 2006
Applicant: Cleveland-Cuyahoga County Port Authority

Sent via: Overnight USPS mail and e-mail (mark.w.scalabrino@usace.army.mil)

Dear Mr. Scalabrino:

Thank you for notifying us of this public notice and of Cleveland-Cuyahoga County Port Authority's Application for permit under Authority of Section 10 of the Rivers and Harbors Act of 1899 requesting a permit for dredging at the face of the Cleveland Bulk Terminal at 5400 Whiskey Island, Cleveland, Ohio, 44102.

The Committee to Save Cleveland's Hulett's and the undersigned individuals hereby request the opportunity to participate as consulting parties under Section 106 of the National Historic Preservation Act pursuant to 36CFR §800.2 (c)(5) and §800.3 (f)(3).

As stated in the Public Notice:

The proposed dredging is considered to be part of the expansion plan for the Cleveland Bulk Terminal, a property listed in the National Register of Historic Places as the Pennsylvania Railway Ore Dock. The entire historic property is within the area of potential effects, as shown on Sheet 2 of 4. As part of this expansion, the applicant removed or demolished the historically contributing resources in order to increase the tonnage of bulk material that could be stored on-site. Two Hulett Ore Unloaders were demolished, two Hulett Ore Unloaders were dismantled and are stored on-site, two shunt engines were demolished, two shunt engines were transferred to museums, and the machine shop, storage shed, office, shower/lunchroom, and power house were all demolished.

We wish to also thank you for recognizing the fact that the Port Authority has demolished contributing historic resources in anticipation of this present dredging permit application, and that this demolition had an adverse effect on these historic resources. As the Public Notice stated:

Committee to Save Cleveland's Hulett's to USACE March 29, 2006

The Corps has determined that the removal of the historically important structures from the project site constitutes an adverse effect on the Pennsylvania Railway Ore Dock. Further, the Corps has determined that the scope of the dredging would not be as extensive as currently proposed **but for the removal of the historic structures and the resulting expansion of available storage capacity.** (Emphasis added)

As the Plaintiffs in the court case Committee to Save Cleveland's Hulett's, et al. v. U.S. Army Corps of Engineers, 163 F. Supp. 2d 776 (N.D. Ohio March 30, 2001), We argued that the Port Authority had engaged in unlawful anticipatory demolition, in violation of 16 U.S.C. 470h-2(k), by demolishing the historic structures. However the court found:

The Court...cannot know whether the Port Authority will ask for further dredging or other permits from the Corps relating to its improvement project and, thus, cannot know whether §470h-2(k) will be implicated in the future. Quite simply, plaintiffs' claim asserting anticipatory demolition under §470h-2(k) is **not yet ripe** because the factual predicate to such a claim does not exist. (Emphasis added)

At the time, the claim of anticipatory demolition was deemed "not ripe", as the previous permit had already been granted and the initial work under the 1999 permit was completed before the historic properties were demolished. But the court continued:

If the Port Authority were now to request dredging in areas beyond that encompassed by the permit, plaintiffs could seek to invoke §470h-2(k) to stop the Corps from granting another permit to the Port Authority.

That time is now at hand. Plaintiffs' claim is now "ripe." The "factual predicate" has occurred. In its present permit application, the Port Authority has requested dredging in areas beyond that encompassed by the previous permit, after having demolished the historic properties absent a "106 review" in violation of the NHPA. As the court held in Committee to Save Cleveland's Hulett's, et al. v. U.S. Army Corps of Engineers, 163 F. Supp. 2d 776 (N.D. Ohio March 30, 2001):

The Court finds that the Corps violated the National Historic Preservation Act when issuing the permit to the Port Authority because it did not wait for objections from the Ohio SHPO (or the ACHP) before issuing the permit, and did not proceed with the § 106 review process when those agencies did object.

The Army Corps then did properly revoke the dredging permit, so no permitted dredging occurred from the time of the court's order until now.

The NHPA provides a punishment for those who improperly violate provisions of the NHPA regarding anticipatory demolition:

Committee to Save Cleveland's Hulett's to USACE March 29, 2006

§470h-2(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106 of this Act, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the [Advisory] Council [on Historic Preservation], determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. (Explanatory words added)

As the Army Corps has said, "...the Corps has determined that the scope of the dredging would not be as extensive as currently proposed but for the removal of the historic structures and the resulting expansion of available storage capacity." We agree, and argue that since the Port Authority has demolished the historic properties in anticipation of applying for the present dredging permit, the Army Corps must deny the Port Authority's application for a dredging permit or any other assistance, in order to comply with the law, unless the stringent conditions of §470h-2(k) are satisfied.

In light of the Port Authority's violation of §470h-2(k), we stand ready to pursue legal remedies to prevent the Army Corps from issuing the dredging permit, or from providing any other assistance to the Port Authority, including consultation or advice regarding this permit application. These legal remedies include, but are not limited to: 1) court-ordered injunction prohibiting issuance of the permit, absent compliance of §470h-2(k); 2) court-ordered revocation of any permits issued in violation of §470h-2(k); 3) court-ordered prohibition of federal services to the Port Authority, and 4) any other legal remedies that might be available.

While the law does allow the Army Corps to ultimately issue a permit, that decision must be made after consultation and must be based on a determination that special circumstances justify granting the permit despite the adverse effects.

In our view those special circumstances would be satisfied if and only if the Cleveland-Cuyahoga County Port Authority agrees to the following conditions to minimize and mitigate the adverse effects to the Historic Hulett's:

1. Fund an engineering study by an independent qualified professional to determine the necessary work to prepare a foundation at a Dock 32 site next to the Steamship *William G. Mather* for erection of the Hulett Ore Unloaders. Dock 32 is relatively close to the Hulett's historic location and will maximize opportunity for heritage tourism because of its proximity to other resources such as the Mather and the Great Lakes Science Center Museum and the proposed move to the Dock 32 location of the USS COD Submarine.
2. Fund the preparation work for the foundation for the Hulett's at Dock 32.
3. Fund the relocation of the Hulett's from the Cleveland Bulk Terminal to Dock 32.
4. Fund the re-assembling of the Hulett's in such a manner as to render them capable of operating.

Committee to Save Cleveland's Hulett's to USACE March 29, 2006

5. Fund the costs for making one Hulett operational, including providing electric service, and a power converter properly sized to allow full operation.

Fulfillment of these conditions would act as mitigation of past actions, providing a small consolation for the citizens of this nation and this region, who have been deprived of a unique and nationally significant historic property by illegal actions of the Army Corps and the Port Authority.

Since the two Hulett's were dismantled in 2000, the Port Authority has shown a pattern of callous disregard and neglect that has continually threatened the viability of restoring the Hulett's, since their deterioration exacerbates the cost of reassembly and repair.

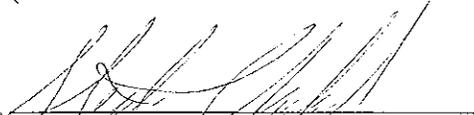
Specifically:

- The Port Authority has been negligent by failing to store the two dismantled Hulett's in the manner promised, which was warranted for safekeeping and eventual restoration.
- The Port Authority has been grossly negligent in the performance of its fiduciary duty to those donating funds to preserve the Hulett's, in that it did not comply with its obligations, in partnership with the City of Cleveland Landmarks Commission and Oglebay Norton Company, to form a non-profit foundation to manage the restoration of the two dismantled Hulett's.

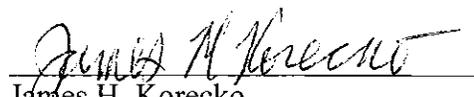
Despite past illegalities, and despite the Port Authority's negligence, the Committee to Save Cleveland's Hulett's and the undersigned would prefer not to work against, but to work with the Port Authority and the Army Corps of Engineers to achieve the following goal: That these unique icons of Cleveland's industrial heritage, innovative origins and visionary citizens – the Hulett's – would again stand tall, this time in a proper historic interpretive context, so that they may be appreciated by current and future generations. We look to forward to participating as consulting parties in the Section 106 process to work together towards this goal.

Sincerely,

(for the Committee to Save Cleveland's Hulett's and as individuals)



Stephen L. Merkel, chairman, Committee to Save Cleveland's Hulett's and as individual
380 Oakmoor Avenue, Bay Village, OH 44140 (440) 835-1720

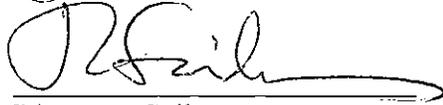


James H. Korecko
13801 Tinkers Creek Road, Valley View, OH 44125 (216) 524-2640

Committee to Save Cleveland's Hulets to USACE March 29, 2006



Jerry C. Mann
16259 Oakhill Road, Cleveland Heights, OH 44112 (216) 268-3268



Rimantas Saikus
28400 South Woodland Road, Pepper Pike, OH 44124 (216) 514-7001

cc - Charlene Dwin Vaughn Advisory Council on Historic Preservation
Franco Ruffini Ohio State Historic Preservation Office
Elizabeth Merritt National Trust for Historic Preservation



NATIONAL TRUST
for HISTORIC PRESERVATION®

March 31, 2006

ATTN: Mark W. Scalabrino
U.S. Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, NY 14027-3199

Re: Public Notice # 1999-01471(4) Section OH 10 (March 3, 2006)
Cleveland-Cuyahoga County Port Authority
Dredging at the historic Cleveland Bulk Terminal

Dear Mr. Scalabrino:

On behalf of the National Trust for Historic Preservation, we wish to participate as a consulting party under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, with respect to the above-referenced permit application by the Cleveland-Cuyahoga County Port Authority, pursuant to 36 C.F.R. §§ 800.2(c)(5) and 800.3(f)(3). As explained in the Army Corps' Public Notice, the Port Authority seeks to conduct dredging activities along the dock face of the Cleveland Bulk Terminal, which is listed in the National Register of Historic Places as the Pennsylvania Railway Ore Dock, and was formerly the location of the historic Hulett Ore Unloaders.

We commend the Army Corps for acknowledging in the Public Notice the direct relationship between the scope of the current permit application and the applicant's earlier demolition of the historic Hulett Ore Unloaders in 2000, both of which are tied to the expansion of the storage area at the Cleveland Bulk Terminal. We agree with the Army Corps' determination of adverse effect.

In our view, the Port Authority's actions in 2000 resulted in unlawful anticipatory demolition under Section 110(k) of the NHPA, 16 U.S.C. § 470h-2(k), because the Port Authority "intentionally significantly adversely affected" the historic Huletts, with the intent to avoid the requirements of Section 106. As a result of that anticipatory demolition, the Army Corps is required to deny the current dredging permit, unless the Corps engages in a consultation process that includes the Advisory Council on Historic Preservation, and determines that specific circumstances justify issuing the permit, notwithstanding the adverse effect. *See* 36 C.F.R. § 800.9. This Section 106 consultation, which the Army Corps has now initiated, will also give the Corps the opportunity to remedy its own earlier violation of Section 106 as found by the court in *Committee to Save Cleveland's Huletts v. U.S. Army Corps of Engineers*, 163 F. Supp. 2d 776 (N.D. Ohio 2001).

Protecting the Irreplaceable



1785 MASSACHUSETTS AVENUE, NW • WASHINGTON, DC 20036
202.588.6000 • FAX: 202.588.6038 • TTY: 202.588.6200 • WWW.NATIONALTRUST.ORG

Fortunately, the components of two of the Hulett's have been salvaged and retained, even if they have not been properly cared for in the intervening five years. This Section 106 consultation provides an ideal opportunity to develop a mitigation plan that would carry out the vision of reconstructing the Hulett's at a location that will enable the public to see them as an icon of Cleveland's industrial heritage, and to learn more about their historic function and operation.

One of the crucial issues during the consultation process for developing mitigation measures will be selecting the best location for reconstructing the two Hulett's. In our view, serious consideration should be given to placing the Hulett's at Dock 32, next to the Steamship *William G. Mather*. This location would enhance the potential for heritage tourism because of its proximity to other visitor destinations with related themes, such as the Great Lakes Science Museum and maritime history sites.

It is our understanding that the Port Authority has not lived up to all of the commitments it made to the Cleveland Landmarks Commission back in 2000 (for example, to store the dismantled Hulett's properly and to form a nonprofit organization to move forward with the reconstruction of the Hulett's). Nonetheless, the consultation process for this dredging permit provides an opportunity to remedy those deficiencies. In order to satisfy the requirements of Section 110(k), we believe it would be appropriate to require the Port Authority to provide significant funding for the relocation and reconstruction of the Hulett's as a condition for the dredging permit. These mitigation commitments should also be incorporated into a Memorandum of Agreement (MOA) with the Army Corps and the other parties under Section 106, in order to resolve the adverse effects.

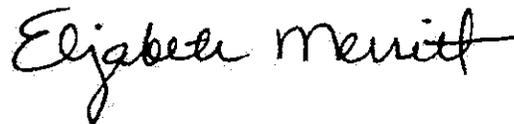
Interests of the National Trust. The National Trust was chartered by Congress in 1949 to lead the private historic preservation movement in the United States and to facilitate public participation in the preservation of our nation's heritage. 16 U.S.C. § 468. The National Trust has also been designated by Congress as a member of the Advisory Council on Historic Preservation, which is the independent federal agency that oversees implementation of Section 106, and assists other agencies in complying with their responsibilities under the Act. *See id.* §§ 470i(a)(8), 470s.

The National Trust has a long history of involvement with the Army Corps of Engineers in particular, and a solid track record of advocacy to enforce compliance with Section 106 by the Army Corps. This advocacy work has included litigation against the Army Corps throughout the country dating back to 1982, and participation as a consulting party in Section 106 review process for numerous Army Corps undertakings. In fact, the National Trust participated as *amicus curiae* in Committee to Save Cleveland's Hulett's v. U.S. Army Corps of Engineers, 163 F. Supp. 2d 776 (N.D. Ohio 2001), and we would welcome the opportunity to work with the Army Corps and the Cleveland Port Authority to minimize and mitigate the harm to the historic Hulett Ore Unloaders resulting from the Port Authority's prior demolition and dismantling of the Hulett's.

Mark W. Scalabrino
U.S. Army Corps of Engineers
March 31, 2006
Page 3

Again, we commend the Army Corps for initiating this Section 106 review in a manner that provides a meaningful opportunity for preserving a nationally significant icon of America's industrial heritage. We appreciate your considering the National Trust's comments, and we look forward to working with you as a consulting party toward a successful outcome.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel

cc: Thomas Switala, Chief, Regulatory Branch
U.S. Army Corps of Engineers
Charlene Vaughn, Advisory Council on Historic Preservation
Franco Ruffini, Deputy SHPO, Ohio
Gary Failor, President, Cleveland-Cuyahoga County Port Authority
Robert Kaiser, Secretary, Cleveland Landmarks Commission
Tim Donovan, Director, Ohio Canal Corridor
Ray Saikus, Committee to Save Cleveland's Hulett's
Kathleen Crowther, Cleveland Restoration Society
Royce Yeater, Midwest Regional Director, National Trust for Historic Preservation

April 1, 2006

ATTN: Mark W. Scalabrino
United States Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, NY 14027-3199
Email: mark.w.scalabrino@usace.army.mil
Phone: (716) 879-4327

From: Ed Hauser
11125 Lake Avenue #402
Cleveland, OH 44102
Email: ejhauser@ameritech.net
Phone: (216) 651-3476

cc: Thomas C. Switala, Chief, Regulatory Branch
Email: thomas.c.switala@usace.army.mil

Re: PUBLIC NOTICE # 1999-01471(4) - Section OH 10
Application for Permit under Authority of Section 10 of the Rivers and Harbors Act
of 1899
Applicant: Cleveland-Cuyahoga County Port Authority
Published: March 3, 2006 Expired: April 1, 2006

Dear Mr. Scalabrino:

Thank you for the opportunity to comment on this public notice regarding the Cleveland-Cuyahoga County Port Authority's (Port Authority) Application for permit under Authority of Section 10 of the Rivers and Harbors Act of 1899, requesting a permit for dredging at the face of the Cleveland Bulk Terminal at 5400 Whiskey Island, Cleveland, Ohio, 44102.

Please add these comments to the United States Army Corps of Engineers (USACE) Administrative Record. I was a Plaintiff involved in the federal court case: *Committee to Save Cleveland's Huletts, et al v. U.S. Army Corps of Engineers*.

I am submitting these comments as an Individual and Plaintiff in the case mentioned above. My comments submitted here are mine alone and are separate of any that the Committee to Save Cleveland's Huletts and/or the other Individual Plaintiffs may submit for this public notice.

As stated in the Public Notice:

The proposed dredging is considered to be part of the expansion plan for the Cleveland Bulk Terminal, a property listed in the National Register of

Historic Places as the Pennsylvania Railway Ore Dock. The entire historic property is within the area of potential effects, as shown on Sheet 2 of 4. As part of this expansion, the applicant removed or demolished the historically contributing resources in order to increase the tonnage of bulk material that could be stored on-site. Two Hulett Ore Unloaders were demolished, two Hulett Ore Unloaders were dismantled and are stored onsite, two shunt engines were demolished, two shunt engines were transferred to museums, and the machine shop, storage shed, office, shower/lunchroom, and power house were all demolished.

Thank you for asserting the fact that the Port Authority has demolished historic contributing resources in anticipation of this present dredging permit application, and that this demolition had an adverse effect on these historic contributing resources. As the Public Notice stated:

The Corps has determined that the removal of the historically important structures from the project site constitutes an adverse effect on the Pennsylvania Railway Ore Dock. Further, the Corps has determined that the scope of the dredging would not be as extensive as currently proposed **but for the removal of the historic structures and the resulting expansion of available storage capacity.** (Emphasis added)

In the court case *Committee to Save Cleveland's Hulett's, et al. v. U.S. Army Corps of Engineers*, 163 F. Supp. 2d 776 (N.D. Ohio March 30, 2001), Plaintiffs in this case argued that the Port Authority had committed anticipatory demolition, in violation of 16 U.S.C. 470h2(k) by demolishing the historic structures. However, the court found:

The Court...cannot know whether the Port Authority will ask for further dredging or other permits from the Corps relating to its improvement project and, thus, cannot know whether §470h-2(k) will be implicated in the future. Quite simply, plaintiffs' claim asserting anticipatory demolition under §470h-2(k) is **not yet ripe** because the factual predicate to such a claim does not exist. (Emphasis added)

At the time, the claim of anticipatory demolition was deemed "not ripe", as the previous permit had already been granted and the initial work under the 1999 permit was completed before the historic properties were demolished. But the court continued:

If the Port Authority were now to request dredging in areas beyond that encompassed by the permit, plaintiffs could seek to invoke §470h-2(k) to stop the Corps from granting another permit to the Port Authority.

That time is now at hand. Plaintiffs' claim is now "ripe." The "factual predicate" has occurred. In its present permit application, the Port Authority has requested dredging in areas beyond that encompassed by the previous permit, after having demolished the historic properties absent a "106 review" as required by the NHPA. As the court held in

Committee to Save Cleveland's Hulett's, et al. v. U.S. Army Corps of Engineers, 163 F. Supp. 2d 776 (N.D. Ohio March 30, 2001):

The Court finds that the Corps violated the National Historic Preservation Act when issuing the permit to the Port Authority because it did not wait for objections from the Ohio SHPO (or the ACHP) before issuing the permit, and did not proceed with the § 106 review process when those agencies did object.

The Army Corps then did properly revoke the dredging permit, so no permitted dredging occurred from the time of the court's order until now.

The NHPA provides a punishment for those who improperly violate provisions of the NHPA regarding anticipatory demolition:

§470h-2(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106 of this Act, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the [Advisory] Council [on Historic Preservation], determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. (Explanatory words added)

As the Army Corps has said, "...the Corps has determined that the scope of the dredging would not be as extensive as currently proposed but for the removal of the historic structures and the resulting expansion of available storage capacity." As an Individual and Plaintiff, I agree, and argue that since the Port Authority has demolished the historic properties in anticipation of applying for the present dredging permit, in order to comply with the law, the Army Corps must deny the Port Authority's application for a dredging permit or any other assistance.

Furthermore, in light of this clear violation of §470h-2(k), as an Individual and Plaintiff, I stand ready to pursue legal remedies to prevent the Army Corps from issuing the dredging permit, or from providing any other assistance to the Port Authority, including consultation or advice regarding this permit application. These legal remedies include, but are not limited to: 1) court-ordered denial of the permit, 2) court-ordered revocation of any permits issued in defiance of Plaintiffs' request, 3) court-ordered denial of any and all federal services whatsoever to the Port Authority, and 4) any other legal remedies that might be available.

In 2005, the Port Authority authorized the funds to hire consultants to conduct a study "...related to the removal of the disassembled Hulett Ore Unloaders from the Cleveland Bulk Terminal" (Port Authority Resolution 2005-52). As of this public notice expiration

date of April 1, 2006, the Port Authority has not publicly released this study. Since this study is not available for public review, I cannot speculate if the findings of the study will be adequate or if another study by independent consultants will need to be conducted.

The Committee to Save Cleveland's Huletts has proposed to relocate the Huletts to a site on Dock 32, owned by the city of Cleveland.

Cleveland City Councilman, Matt Zone (Ward 17, where the historic Huletts Ore Unloaders and the historic C&P Ore Dock are located), is involved with coordinating the effort for the Hulett relocation from the Cleveland Bulk Terminal. Councilman Zone has proposed an additional site to relocate the Hulett Ore Unloaders on Whiskey Island property, owned by Cuyahoga County.

As an Individual and Plaintiff, I will reconsider my opposition to the dredging permit IF AND ONLY IF the Cleveland-Cuyahoga County Port Authority agrees to the following conditions:

1. Provide all funds for an engineering study to determine the necessary work to relocate and prepare a foundation at both Dock 32 site next to the Steamship *William G. Mather* and on the Whiskey Island property that was mentioned above. Such engineering study ("Approved Study") to be performed by an organization/s approved by myself, as an Individual and Plaintiff, and the Committee to Save Cleveland's Huletts (if the committee wishes to participate).
2. Pay all costs for preparation work for the foundation for the Huletts at Dock 32 or Whiskey Island, depending on the findings of the "Approved Study."
3. Pay all costs for transporting the Huletts from the Cleveland Bulk Terminal to Dock 32. or Whiskey Island, depending on the findings of the "Approved Study."
4. Pay all costs for re-assembling the Huletts in such a manner as to render them capable of operating on Dock 32 or Whiskey Island, depending on the results of the "Approved Study."
5. Pay all costs for making operational one Hulett, including providing electric service, and a power converter properly sized to allow full operation on Dock 32 or Whiskey Island, depending on the findings of the "Approved Study."

Fulfillment of these conditions act as mitigation of past actions, providing a small consolation for the citizens of this nation and this Plaintiff, who has been deprived of a unique and significant National Landmark by illegal actions of the Army Corps and the Port Authority.

The Port Authority has shown a pattern of action and inaction that has continually threatened the viability of restoring the Huletts, since their deterioration would create

excuses to discourage objections to any future permit application. Specifically:

- The Port Authority has been negligent by failing to store the two dismantled Hulettts in the manner promised, which was warranted for safekeeping and eventual restoration.
- The Port Authority has been grossly negligent in the performance of its fiduciary duty to those donating moneys to preserve the Hulettts, in that it did not follow through with its obligations, in partnership with the City of Cleveland Landmarks Commission and Oglebay Norton Company, to form a non-profit foundation to manage the restoration of the two dismantled Hulettts.

Despite past illegalities, and despite the Port Authority's negligence, I would prefer not to work against, but to work with the Port Authority and the Army Corps of Engineers to achieve the following goal: That these unique icons of Cleveland's innovative origins and visionary citizens – the Hulettts – would again stand tall, this time in a proper historic interpretive context, so that they may be appreciated by current and future generations.

Sincerely,

Edward J. Hauser
11125 Lake Avenue #402
Cleveland, OH 44102
(216) 651-3476



Keweenaw Bay Indian Community Tribal Historic Preservation

107 Beartown Road, • Baraga, Michigan 49908

Phone: 906-35306272 • Fax: 906-353-6869 • E-mail: scohen@kbic-nsn.gov

Cultural Resources Review—Determination “no properties”

Review Date: March 27, 2006	Project Number: 1999-01471
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Agency: USACE Buffalo District	Applicant: Cleveland-Cuyahoga County Port Authority
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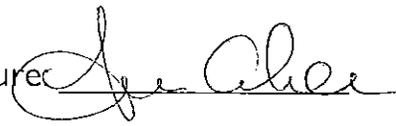
Project Location: Cleveland Harbor, Lake Erie, at the Cleveland Bulk Terminal, located at 5400 Whiskey Island, in the City of Cleveland, Cuyahoga County, Ohio 44102

Project Description: perform maintenance dredging in Cleveland Harbor, Lake Erie.

The Keweenaw Bay Indian Community (KBIC) received your requests for comments or interest concerning the National Historic Preservation Act, Section 106 request for review and comment to the effect on historic and cultural sites within the proposed project area. The KBIC Tribal Historic Preservation Office has no interests documented at this time in the proposed project areas. It is KBIC's belief that many prehistoric sites and Indian historic sites in the area have not yet been identified or documented. KBIC is among the many Tribes initiating the process of assisting in this endeavor. KBIC urges you to consult other Indian Tribes in your immediate area that may have interests in your project area, if you have not already done so.

If the scope of work changes in any way, or if artifacts or human remains are discovered, please notify KBIC immediately so we can assist in making an appropriate determination. KBIC urges you to consult other Indian Tribes in your immediate area that may have interests in your project area, if you have not already done so.

Please forward any future request for review of historic and cultural properties according to the National Historic Preservation Act Section 106 to Summer Sky Cohen, Officer, Tribal Historic Preservation Office. Please keep us informed of future projects as KBIC plans to increase our efforts to identify and document sites in the area.

Officer Signature 	Date: March 28, 2006
---	----------------------

Scalabrino, Mark W LRB

From: Sanders, Randy [Randy.Sanders@dnr.state.oh.us]
Sent: Friday, April 07, 2006 1:45 PM
To: Scalabrino, Mark W LRB
Subject: 06-0068; BCOE PN 1999-01471(4), Cleveland-Cuyahoga County Port Authority.

ODNR COMMENTS TO BCOE Public Notice 1999-01471(4), Cleveland-Cuyahoga County Port Authority.

Location: Cleveland harbor, Lake Erie, at the Cleveland Bulk Terminal, located at 5400 Whiskey island, in then City of Cleveland, Cuyahoga County, Ohio 44102.

Project: In order to allow large commercial vessels to dock at the Cleveland Bulk Terminal while loading and unloading, the applicant proposes to dredge approximately 15,000 cubic yards of material from a 2,000' long x 75' wide area along the dock face. The dredged material will be placed in the Corps of Engineers' Confined Disposal Facility in the Cleveland harbor East Basin.

The Ohio Department of Natural Resources (ODNR) has completed a review of the above referenced project. These comments were generated by an inter-disciplinary review within the Department. These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the National Environmental Policy Act, the Coastal Zone Management Act, Ohio Revised Code and other applicable laws and regulations. These comments are also based on ODNR's experience as the state natural resource management agency and do not supersede or replace the regulatory authority of any local, state or federal agency nor relieve the applicant of the obligation to comply with any local, state or federal laws or regulations.

Rare and Endangered Species: The ODNR Natural Heritage Database contains one record for Richardson's Pondweed (*Potamogeton richardsonii*), potentially threatened, from 1991, within the Whiskey Island area of Cleveland Harbor between the mouth of the Cuyahoga River and the ore docks to the west.

Fish and Wildlife: The ODNR Division of Wildlife recommends no in-water work from April 15 to June 30 to reduce impacts to aquatic species.

Boating and Navigation: The ODNR Division of Watercraft sees this dredging as necessary and will not interfere with recreational navigation.

Geological Survey: The applicant wants to dredge a 2000-foot-long by 75-foot-wide area located at the bulk terminal in the western part of Cleveland Harbor. The area will be dredged to -27 feet LWD (542.2 feet IGLD85). Given contaminant levels in sediment dredged from nearby federal channels, all dredged sediment will be placed in CDF Dike 10 B. The proposed dredging and disposal probably will not have a significant impact on coastal processes. However, the western end of the project area may, from time to time, contain sandy sediment, as sand occurs lakeward of the marina basin at Edgewater Marina, atop the breakwater at Edgewater Marina, and in the entrance to Edgewater Marina. Some of this sand may be transported into the western part of Cleveland Harbor. If sand is encountered during dredging, it should be segregated in the CDF for possible recovery and placement in the nearshore east of Cleveland.

Coastal Management: The ODNR Office of Coastal Management comments that pursuant to the Coastal Zone Management Act of 1972, as amended, and its corresponding federal regulations, the Army Corps of Engineers permit may not be issued until a Consistency concurrence is issued by ODNR. **A signed consistency certification statement has not been received by ODNR for this application.** The Consistency review will begin immediately upon receipt of the consistency certification and will last no longer than six months from that date. To insure consistency with the policies of the Ohio Coastal Management Program, the project must comply with all applicable conditions outlined in the Ohio Environmental Protection Agency's *Section 401 Water Quality Certification* for U.S. Army Corps of Engineers *Letters of Permission* dated July 1, 2003.

ODNR appreciates the opportunity to provide these comments. Please contact Randy Sanders at 614.265.6344 if you have questions about these comments or need additional information.

Randall E. Sanders
 Environmental Administrator
 Division of Real Estate & Land Management
 Ohio Department of Natural Resources
 2045 Morse Rd, C4
 Columbus, Ohio 43229-6693

4/7/2006

614.265.6344
fax 614.267.4764
randy.sanders@dnr.state.oh.us



Cleveland Restoration Society

Preservation Resource Center of Northeastern Ohio

SARAH BENEDICT HOUSE
Built in 1883 and rehabilitated in 1998

2006 APR 13 PM 12:37

March 31, 2006

Mark W. Scalabrino
U.S. Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo NY 14207

RE: Public Notice No. 1999-01471(4) Section: OH 10 (March 3, 2006)
Applicant: Cleveland-Cuyahoga County Port Authority
Cleveland, Cuyahoga County, Ohio

Dear Mr. Scalabrino,

The Cleveland Restoration Society requests consulting party status under Section 106 of the National Historic Preservation Act of 1966 (NHPA) and pursuant to 36 CFR 800.3(f)(3) with respect to the above-referenced federal permit application by the Cleveland-Cuyahoga County Port Authority for dredging activities at the Cleveland Bulk Terminal.

The Cleveland Restoration Society was founded in 1972 to protect our fragile and often threatened historic resources. Over the years, the Society has been an integral partner in the preservation, rehabilitation and restoration of countless historic resources in the Cleveland area and has set a national standard for innovative and effective local preservation programs and planning initiatives. The Society is one of the largest professionally staffed, private preservation organizations in the country and the premier preservation organization in Northeast Ohio.

Thank you for your consideration on this matter. I can be reached at 216-426-3105 or by email at kcrowther@clevelandrestoration.org.

Sincerely,

Kathleen H. Crowther
Executive Director

Cc: Thomas Switala, Chief, Regulatory Branch USACE
Charlene Vaughn, Advisory Council on Historic Preservation
Franco Ruffini, Deputy State Historic Preservation Officer, Ohio SHPO
Robert Keiser, Secretary, Cleveland Landmarks Commission
Royce Yeater, Midwest Regional Dir., National Trust for Historic Preservation

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Kathleen H. Crowther
EXECUTIVE DIRECTOR

Sarah Benedict House
3751 Prospect Avenue
Cleveland, OH 44115-2705
(216) 426-1000
(216) 426-1975 Fax
www.clevelandrestoration.org



2006 AUG 36 AM 11:14

August 23, 2006

Mark W. Scalabrino
United States Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, NY 14207-3199

Re: PUBLIC NOTICE # 1999-01471(4) Section OH 10
Published March 3, 2006
Applicant: Cleveland-Cuyahoga County Port Authority

Sent via: US mail and e-mail (mark.w.scalabrino@usace.army.mil)

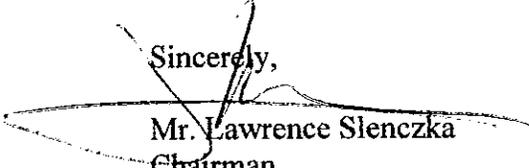
Dear Mr. Scalabrino:

Thank you for notifying us of this public notice and of Cleveland-Cuyahoga County Port Authority's Application for permit under Authority of Section 10 of the Rivers and Harbors Act of 1899 requesting a permit for dredging at the face of the Cleveland Bulk Terminal at 5400 Whiskey Island, Cleveland, Ohio, 44102.

Ohio Canal Corridor and the undersigned individuals hereby request the opportunity to participate as consulting parties under Section 106 of the National Historic Preservation Act pursuant to 36CFR.

We will forward a letter clarifying the role that our organization has played in the efforts to preserve the historic Hulett Ore Unloaders.

Sincerely,


Mr. Lawrence Slenczka
Chairman
Ohio Canal Corridor


Mr. Tim Donovan
Director
Ohio Canal Corridor



2006 JUN 13 PM 12:04

June 8, 2006

Mark Scalabrino
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207

Dear Mr. Scalabrino:

RE: Cleveland Bulk Terminal Dredging, Cleveland, Cuyahoga County, OH
[1999-01471(4)]

This letter is in response to correspondence received on March 6, 2006. You also discussed this project with Lisa Adkins on April 7, 2006. We apologize for the delay in our written response. Our comments are made pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, and the associated regulations at 36 CFR Part 800. We offer a number of recommendations that the Corps should consider in planning to re-initiate consultation for this undertaking.

The proposed dredging, which is related to the expansion of the Cleveland Bulk Terminal, is an undertaking that has already resulted in the demolition of contributing features of the Pennsylvania Railway Ore Dock, which is listed in the National Register of Historic Places. We concur that this is an adverse effect to a significant historic property. Further, it is our opinion that, although the Corps did revoke the previously issued permit for this undertaking in 2001, this adverse effect was not adequately resolved after the U.S. District Court order was issued.

Since the Corps has elected to reconsider granting a permit for this undertaking, it is important that all consulting parties be provided with information that can be used as a basis for future comment. As part of their permit application, the Cleveland-Cuyahoga County Port Authority has provided a summary report with information about the undertaking and the previous permit consideration, as well as subsequent action taken at the project site. Within the report, the Port Authority's consultant has made recommendations about the consideration of effects to historic property. Has the Corps reviewed this document? Does the Corps agree with its conclusions? The Corps should also provide copies of this document to all consulting parties, if this has not already occurred. We strongly recommend that the Corps provide comments regarding this summary report to all consulting parties. We also recommend that in conjunction with this analysis, the Corps should evaluate the applicant's past efforts to complete locally mandated historic reviews to determine whether these activities could serve as the basis for future mitigation offered in a Memorandum of Agreement.

We strongly recommend that the Corps reexamine the Memorandum & Order that was issued for this undertaking in 2001 to determine whether any direction was provided by the U.S. District Court that must be considered as we resume consultation. With the current notice, it appears that the Corps seeks to re-initiate consultation at the earliest procedural steps of the Section 106 process, which presents some challenges in light of the previous litigation. In order to resolve any outstanding procedural obstacles that may exist, we also recommend that the Corps ask the Advisory Council on Historic Preservation to provide an opinion under 36 CFR Section 800.9(a) regarding the adequacy of the Corps compliance efforts for this

OHIO HISTORICAL SOCIETY

Ohio Historic Preservation Office

567 East Hudson Street, Columbus, Ohio 43211-1030 ph: 614.298.2000 fx: 614.298.2037

www.ohiohistory.org

Page 2
June 8, 2006
Mark Scalabrino

undertaking. We will also join with the Corps in inviting the Council's full participation in this consultation under Appendix A to 36 CFR Part 800. It is our opinion that Criteria 1, 2 and 3 can clearly be applied to this undertaking and we know that the U.S. District Court has already identified deficiencies in the Corps' consultative process.

It is our understanding that through public notice, the Corps has already notified parties that had previously expressed an interest in the undertaking. We recommend that the Corps provide all these potential consulting parties with a consultation plan that describes how the Corps intends to resume discussions about this project under 36 CFR Part 800. At this point, it is also our opinion that the Corps should affirm that the appropriate consulting parties are invited to participate in consultation, as described in 36 CFR Section 800.2. We caution the Corps to take considerable care in planning how to meet their obligations under these regulations. You must provide both consulting parties and the general public with information about this undertaking. You must also provide them with reasonable opportunities to provide comment. Using public comment periods governed by your standard permitting process will not facilitate consultation that meets the spirit or intent of these regulations. It is our expectation that the Corps will conclude that both public meetings and consulting party meetings will be necessary to facilitate consultation.

Please let us know if you would like to discuss plans for this consultation in more detail. We encourage you to consider these recommendations seriously as you plan for consultation. If you have any questions about this letter, please contact Lisa Adkins at 614-298-2000.

Sincerely,



Mark J. Epstein, Department Head
Resource Protection and Review

RPR. No. 1004898

Cc:

Skip Jacobsen, Cleveland-Cuyahoga County Port Authority, 1375 E. Ninth Street, Suite 2300, Cleveland, OH 44114
John Eddins, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue, NW- Suite 809, Washington, DC 20004
Elizabeth Merritt, National Trust for Historic Preservation, 1784 Massachusetts Ave. NW, Washington, DC 20036
Committee to Save Cleveland's Hulets, P.O. Box 32700, Cleveland, OH 44132-0700
Kathleen Crowther, Cleveland Restoration Society, 3751 Prospect Ave., Cleveland, OH 44115-2705



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO
ATTENTION OF:

October 6, 2006

Regulatory Branch

SUBJECT: Determination of Adverse Effect, Application No. 1999-01471(4)

Mr. Don Klima
Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, N.W. #809
Washington, District of Columbia 20004

Dear Mr. Klima:

This is in reference to an application submitted by the Cleveland-Cuyahoga County Port Authority to conduct dredging in Cleveland Harbor, Lake Erie, adjacent to the Cleveland Bulk Terminal dock face. The project in question is located at 5400 Whiskey Island, in the City of Cleveland, Cuyahoga County, Ohio.

The Cleveland-Cuyahoga County Port Authority proposes to dredge approximately 15,000 cubic yards of material from a 2,000' long x 75' wide area along the dock face. The area is proposed to be dredged to a bottom elevation of 542.2' International Great Lakes Datum, 1985 (27' below Low Water Datum). The dredged material will be placed in the Corps of Engineers' Confined Disposal Facility in the Cleveland Harbor East Basin.

~~The Corps of Engineers has determined that this project will have an adverse effect on the Cleveland Bulk Terminal, a property listed in the National Register of Historic Places as the Pennsylvania Railway Ore Dock. The purpose of this letter is to invite your participation in consultation as defined in Federal regulations contained in 36 CFR Part 800.6. The necessary documentation, as required by 36 CFR Part 800.11(e), is enclosed for your review.~~

The public notice published for this project stated that the proposed dredging is considered to be part of the expansion plan for the Cleveland Bulk Terminal. As part of this expansion, the

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101 80 100 3-

Regulatory Branch

SUBJECT: Determination of Adverse Effect, Application No.
1999-01471(4)

applicant removed or demolished the historically contributing resources in order to increase the tonnage of bulk material that could be stored on-site. Two Hulett Ore Unloaders were demolished, two Hulett Ore Unloaders were dismantled and are stored on-site, two shunt engines were demolished, two shunt engines were transferred to museums, and the machine shop, storage shed, office, shower/lunchroom, and power house were all demolished. The Corps has determined that the removal of the historically important structures from the project site constitutes an adverse effect on the Pennsylvania Railway Ore Dock. Further, the Corps has determined that the scope of the dredging would not be as extensive as currently proposed but for the removal of the historic structures and the resulting expansion of available storage capacity.

The on-site storage of the two dismantled Hulett Ore Unloaders and transfer of two shunt engines were part of the overall mitigation plan approved by the Cleveland Landmark Commission prior to the removal of the historic structures. The mitigation plan also indicates that the two dismantled unloaders are available to be reconstructed should another entity provide land and financing for the project. The mitigation plan also outlined several other mitigation options that considered various combinations of preserving, relocating, and removing the Huletts and buildings. However, these options were determined to be unfeasible. A detailed analysis of the mitigation options is included in the enclosed information. Furthermore, the applicant has indicated that they are willing to consider additional mitigation measures that are not outlined in the mitigation plan.

Several interested parties submitted comments in response to the public notice and requested to be included as consulting parties. ~~These parties include: Cleveland Landmarks Commission,~~ Cleveland Restoration Society, National Trust for Historic Preservation, Committee to Save Cleveland's Huletts, Ohio Canal Corridor, and Mr. Edward Hauser. These parties will be formally notified of their consulting party status by letter.

Pursuant to Federal regulations, you are hereby invited to enter the consultation process to resolve adverse effects to the Pennsylvania Railway Ore Dock. Please respond within 15 days of receipt of this correspondence. If you do not respond, I will assume that you do not wish to enter the consultation process.

Regulatory Branch

SUBJECT: Determination of Adverse Effect, Application No.
1999-01471(4)

A copy of this letter has been forwarded to: Ohio Historic Preservation Office, and the Cleveland-Cuyahoga County Port Authority.

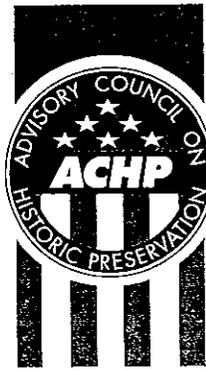
Questions pertaining to this matter should be directed to me at (716) 879-4327, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: mark.w.scalabrino@usace.army.mil

Sincerely,

SIGNED

Mark W. Scalabrino
Biologist

Enclosures



Preserving America's Heritage

2006 NOV -1 AM 11:29

October 25, 2006

Mr. Mark W. Scalabrino
Department of the Army
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207-3199

REF: *Section 404 Permit Application for Dredging in Cleveland Harbor, Lake Erie
Associated with the Proposed Expansion of the Cleveland Bulk Terminal
Application No. 1999-01471(4)
Whiskey Island, City of Cleveland, Cuyahoga County, Ohio*

Dear Mr. Scalabrino:

On October 11, 2006, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on the Cleveland Bulk Terminal (CBT), a property listed in the National Register of Historic Places as the Pennsylvania Railway Ore Dock. Based upon the background provided, it is apparent that activities undertaken by the applicant in 2000 and those proposed in the current Section 404 permit application will adversely affect the Hulett Ore Unloaders, contributing elements of the CBT.

As part of the proposed expansion project, the applicant, in 1999 - 2000, demolished two Hulett Ore Unloaders, dismantled and stored two Hulett Ore Unloaders on site, demolished two shunt engines, transferred two shunt engines to museums, and demolished the machine shop, storage shed, office, shower/lunchroom, and power house. These activities were carried by the applicant prior to the completion of the Section 106 review process and without benefit of ACHP comments. As a result of the 2001 ruling by the U. S. District Court (Committee to Save Cleveland's Hulett's v. U. S. Army Corps of Engineers, 163 F. Supp. 2d 776 (N.D. Ohio 2001)) the Corps was required to revoke the previously issued permit for this undertaking and comply with all the requirements of NHPA, including Section 110(k).

The Corps is now reviewing a new permit application for dredging associated with the CBT expansion and has involved several consulting parties who were previously involved in the local historic preservation review process and who have monitored the impacts to the dismantled Hulett Ore Unloaders during the ensuing years. Given that the focus of Section 106 consultation will be on immediate impacts as well as on the long-term mitigation and interpretation of the disassembled Hulett Ore Unloaders and other contributing elements of the CBT, ACHP participation is warranted. In addition, since the Section 106 review process and consideration of Section 110(k) has been mandated by the Courts, we believe that ACHP involvement is important if the Corps is to provide evidence that it has satisfied both its regulatory and statutory obligations, including development of an appropriate mitigation plan that addresses the preservation and interpretation of the CBT and all its contributing elements.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

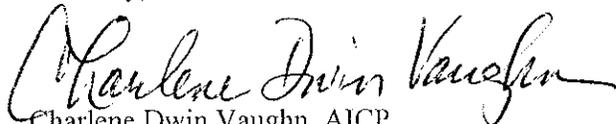
1100 Pennsylvania Avenue NW, Suite 809 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

Therefore, in accordance with 36 CFR § 800.6(a)(1) (ii) of the regulations, "Protection of Historic Properties" (36 CFR Part 800), implementing Section 106 of the National Historic Preservation Act, the ACHP has concluded that Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations is met. Specifically, this undertaking has substantially adversely affected an important and relatively rare historic property (Criterion Appendix A (c)(1)). Furthermore, the consultation for the undertaking involves policy issues related to the manner in which the ACHP's regulations are being applied (Appendix A(c)(2)). Based upon the history of this undertaking, it appears that this project will continue to present procedural problems related to disputes among the consulting parties, which will ultimately require the ACHP's involvement for resolution (Appendix A(c)(3)). The ACHP, therefore, will participate in this consultation.

We have provided written notification, copy enclosed, of the ACHP's decision to enter the consultation on this project to the Honorable Francis J. Harvey, Secretary of the Army, as required by 36 CFR § 800.6(a)(1)(iii). We look forward to consulting with the Corps, the Ohio SHPO, the National Trust on Historic Preservation and the other consulting parties to facilitate completion of the consultation and Section 106 compliance.

If you have any questions or would like to discuss this issue further, please contact Dr. John T. Eddins at 202-606-8553, or by email at jeddins@achp.gov.

Sincerely,



Charlene Dwin Vaughn, AICP
Assistant Director
Office of Federal Agency Programs
Permitting, Licensing, and Assistance Section

Enclosure



Preserving America's Heritage

October 26, 2006

Honorable Francis J. Harvey
Secretary of the Army
101 Army Pentagon
The Pentagon
Washington DC 20310-0101

Dear Secretary Harvey:

The Advisory Council on Historic Preservation (ACHP) has received a notification regarding the adverse effects of an undertaking which is subject to review and permit verification by the U.S. Army Corps of Engineers, Buffalo District, on a property eligible for listing in the National Register of Historic Places. The undertaking involves application by the Cleveland-Cuyahoga County Port Authority for a Section 404 permit for dredging in Cleveland Harbor, Lake Erie, associated with the proposed expansion of the Cleveland Bulk Terminal (CBT), which is located on Whiskey Island, City of Cleveland, Cuyahoga County, Ohio.

We are notifying you that the ACHP will participate in consultation under Section 800.6(a)(1)(iii) of its regulations ("Protection of Historic Properties," 36 CFR Part 800) to assist the Corps of Engineers in meeting the requirements of Section 106 of the National Historic Preservation Act for this undertaking. We have applied Appendix A of our regulations and find that our involvement is warranted because this undertaking has substantially adversely affected an important and relatively rare historic property (Criterion 1). Furthermore, the consultation for the undertaking involves policy issues related to the manner in which the ACHP's regulations are being applied (Criterion 2). Finally, based upon the history of this undertaking, it appears that this project will continue to present procedural problems related to disputes among the consulting parties, which will ultimately require the ACHP's involvement for resolution (Criterion 3). The ACHP, therefore, will participate in this consultation.

A copy of our letter to Mr. Mark W. Scalabrino, Biologist, Buffalo District, Corps of Engineers, notifying him of our intention to participate in consultation is enclosed. If you or your staff have questions, do not hesitate to call me at 202-606-8505.

Sincerely,

John M. Fowler
Executive Director

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 809 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
BUFFALO DISTRICT
1776 NIAGARA STREET
BUFFALO, NY 14207-3199

CELRB-PM-PB

November 30, 2006

MEMORANDUM FOR: Mark Scalabrino, Project Manager, Regulatory Branch

SUBJECT: Review of Consultant's Section 106 Report for the Cleveland Bulk Terminal (CBT), Cleveland, Cuyahoga County, Ohio

I have reviewed the report entitled Cleveland Bulk Terminal, Cleveland, Cuyahoga County, Ohio Section 106 Review by Ted Sande, AIA, Historic Preservation Consultant, 13415 Shaker Blvd., Cleveland, Ohio and dated September 12, 2006.

The Principal Investigator, Dr. Ted Sande, has prepared a well-researched and clearly written summary of the history of the project location, current site conditions, actions taken by the Cleveland Cuyahoga Port Authority in fulfilling conditions set by the Cleveland Landmarks Commission in their issuance of a Certificate of Appropriateness, and associated litigation. This report supersedes work conducted by URS Greiner, Inc. in November 1998 at the project location.

The report notes that the property, as the "Pennsylvania Railway Ore Dock" is listed on the National Register of Historic Places. Contributing resources to the approximately 40-acre listed property include: four Hulett Ore Unloaders, four electric "shunt" locomotives, five individual buildings, and a 1 million-ton ore storage yard encircled by an extensive system of railroad tracks. The site dates to 1911-1912 and meets National Register Criteria A in the areas of Engineering, Invention, Industry, and Transportation. The site is associated with George H. Hulett, whose invention of the Hulett Ore Unloader revolutionized shipping on the Great Lakes. The nomination form was prepared by Carol Poh Miller and Rimantas Saikus in 1995; the property was listed in 1997.

The consultant did an excellent job of examining the material that was compiled by the Port Authority in conjunction with the Cleveland Landmarks Commission. This consisted of Historic American Engineering Record (HAER) photo and archival documentation (HAER No. OH-18) also filed with the Library of Congress, five exhibit panels, and a documentary videotape which Dr. Sande viewed. This documentation, in conjunction with the dismantling and storage of two Huletts, satisfied the Cleveland Landmarks Commission resolution for demolition activities which occurred at the site around 1999-2000.

Photos taken in July 2005, included in the report, show that all of the contributing resources have been removed from the site. These modifications are consistent with the URS Greiner report dated September 1998, entitled The Cleveland Bulk Terminal: An Evaluation of Expanding Capacity and the Economic Impacts (*Proposed Improvements*, p. iii) which states:

“Increasing capacity of the operating face of the dock to the west of the current active area will require the removal of the Hulett ore unloaders, removal of the railroad track running through the center of the CBT and the removal of four buildings.” The report then goes on to detail the significant changes that can be realized from “[r]emoving the Huletts and buildings...”

I do not concur with Dr. Sande’s opinion that there is no effect to historical property from the proposed undertaking. In fact, I believe that a significant adverse impact has already occurred as a result of activities associated with the expansion of the Cleveland Bulk Terminal. While a significant amount of mitigation has already taken place in response to the Cleveland Landmarks Commission resolution, I recommend that additional mitigating measures regarding the two extant Huletts, now in storage on the CBT site, be developed as part of the Section 106 process. These mitigating measures should be formalized in a Memorandum of Agreement between the U.S. Army Corps of Engineers, Advisory Council for Historic Preservation, and Cleveland Cuyahoga County Port Authority,

I recommend that the Buffalo District accept the above referenced report.

Michele L. Hope
Archeologist, Planning Branch